

THE
CANADIAN
1595
LAW OF PARTNERSHIP

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PREFACE.

Some apology may seem necessary for the publication of a work upon a subject which has already been so ably dealt with by standard writers, but any person familiar with the condition of the law in Canada can readily understand that, no matter how ably a subject may have been dealt with by an English text writer, there is still a field, though a more humble one, for the Canadian worker. It is perhaps only necessary to state that there are at least fourteen different Statutory enactments in force in Canada dealing with partnership, in order to appreciate the application to the subject of this work of the above remarks.

It has been the object of the authors to state the established principles of partnership in a concise form and in such a way that it may be seen at once what the law is in any of the various Provinces without, as at present, being obliged to first ascertain the Common law and then search through the Canadian Statutes and decisions to see how far it has been modified.

The scope of the work does not permit of an exhaustive citation of the English authorities, but a careful collection of the Canadian cases has been made, and the leading English cases have been given with references to the standard works where the other authorities are collected.

It is hoped that the work will not only prove a saving of time to the profession, but will enable others who may have occasion to look into the law of partnership to ascertain readily what the general principles of the subject are in any particular Province.

It has been thought desirable to treat of the Quebec law in separate chapters.

Attention is also again directed to the fact that from pages 1 to 94 the paragraphs numbered with heavy black numerals contain the corresponding sections of the Imperial Partnership Act.

SEPTEMBER, 1900.

R. B. H.
P. D.

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12. CLUB.—Thirty-fifth line add *Aikins v. Dominion*, 17 P. R. 303; *Thomas v. Wilson*, 20 U. C. Q. B. 331.
35. Twenty-sixth line the word "agree" should read "agreed."
45. *Judgment against joint debtors*.—Second line after the word 'claim' add, "But see exceptions in *Dueber v. Taggart*, 26 A. R. 295."
51. NOVATION.—The following should be added at end of page, "And see *Dueber v. Taggart*, 26 A. R. 295, 30 S. C. R. 373, where it was held novation had taken place."
- EFFECT OF COVENANT TO INDEMNIFY RETIRING PARTNER.—See *Sutherland v. Webster*, 21 A. R. 228; *Mackelcan v. Newburn*, 19 A. R. 729.
54. Thirty-first line, "p. 40" should read "p. 41."
90. Second line, add "R. S. B. C. c. 150 s. 44."
116. *Joint and separate Estate*.—Sec. 7, R. S. O. Cap. 147, See *Macdonald v. Balfour*, 20 A. R. 404, and *Moorehouse v. Bostwick*, 11 A. R. 76.
117. Add at end of page "*Bell v. Ottawa*, 28 O. R. 519."
- 194 After word "liability" in fifth line add "But as to judgment recovered under rules 587, 603, 605; see *Dueber v. Taggart*, 26 A. R. 295."
210. Third line, rule 228, comma instead of semi-colon after the words "if any."
205. COUNTY COURT. Add after Sec. 2, See *Allen v. Fairfax*, 21 O. R. 598.
- 212 and 213. The heading on p. 213 "(d) single person carrying on business under firm name" should be inserted before rule 229 on p. 212.

INTRODUCTORY.

For the purposes of this work it will be found convenient to deal with the subject of Partnership under the following headings:—

1. General Principles of Partnership.
2. Limited Partnerships.
3. Registration of Partnerships.
4. Rules of Practice in Ontario, Manitoba, British Columbia and Quebec in Actions relating to Partnerships.

I.—GENERAL PRINCIPLES OF PARTNERSHIP.

Most of the general principles relating to partnership will be found codified in the Imperial Partnership Act. This Act has been adopted by Manitoba, North-West Territories, and British Columbia, but not by the other Provinces. As most of the sections, however, are simply declarations of the Common Law, the principles laid down in them will be found applicable in all the Provinces, save the Province of Quebec. Under this heading, therefore, it is proposed to give the sections of the Act, noting wherein they differ from the Common Law, and giving as far as possible, illustrations from cases decided in Canada, as well as references and extracts from the standard English text writers.

The Imperial Partnership Act has not been adopted in the Province of Quebec, nor are its principles altogether applicable to cases there arising. It is, of course, a well-known fact that Quebec differs from the other Provinces of the Dominion in deriving its laws, generally speaking, from those of France. Its Civil Code, enacted in 1865, was based by the codifiers largely upon the old customary law of France and the Code Napoleon; but in dealing with subjects partaking of a commercial nature, such as Partnership, Insurance, Mandate and Merchant Shipping, they drew largely from the principles of the Common Law of England.

Consequently, we find that, on examining the articles of the Civil Code relating to Partnership, the codifiers have adopted principles which, in almost every case, find authority, in one form or another, in the old French law, the Code Napoleon, the English Common Law and the Scotch Law. They apparently felt bound by the verbiage of no one author, by the principles or plan of no one system. They drafted the articles containing the principles of the subject in the manner which seemed to them to best express the law which, up to that time, had been in force in the Province of Quebec or which was best suited to its peculiar position. . .

Under such circumstances, and when authority and precedent are, as a natural result, drawn from such divers sources, it is easily understood how the law and jurisprudence of the Province of Quebec upon this subject, in many instances, varies from that of the other Provinces.

When, however, an article of the Civil Code is based either wholly or in part on English law, English precedent always has influence on the courts of the Province of Quebec.

It has therefore been considered advisable to deal with the Quebec Law under that caption, following as closely as possible for convenience of reference, the chapters of The Imperial Partnership Act dealing with the same subjects.

2.—LIMITED PARTNERSHIPS.

Under this heading will be found the Statutory provisions in the different Provinces, with notes of the cases which have been decided under the different sections.

3.—REGISTRATION OF PARTNERSHIPS.

Under this heading there will be given also the Statutory Provisions in the different Provinces, and notes of the cases decided on each section.

4.—RULES OF PRACTICE IN ONTARIO, MANITOBA, BRITISH COLUMBIA AND QUEBEC.

The rules of practice in the above Provinces will be treated separately.

PART I.

GENERAL PRINCIPLES OF PARTNERSHIP.

1. NATURE OF PARTNERSHIP, OR WHAT CONSTITUTES A PARTNERSHIP.
2. RELATIONS OF PARTNERS TO PERSONS DEALING WITH THEM.
3. RELATIONS OF PARTNERS TO ONE ANOTHER.
4. DISSOLUTION OF PARTNERSHIP, AND ITS CONSEQUENCES.
5. MINING PARTNERSHIPS.
6. SUPPLEMENTAL.

CHAPTER I.

NATURE OF PARTNERSHIP, OR WHAT CONSTITUTES A PARTNERSHIP.

There has been much discussion as to what does and what does not constitute Partnership. There are eighteen different definitions collected in Lindley on Partnership, 6th Ed., pp. 11, 12 and 13.

The definition given by the Imperial Act, sec. 1, as adapted by the Manitoba Act, will be found, speaking generally, applicable to all the Provinces which have not adopted the Act as well as to Manitoba. The British Columbia and North-West Territories Acts give definitions which are substantially the same. The definition given in the Manitoba Act is as follows:

(1) Partnership is a relation which subsists between persons carrying on business in common, with a view to profit.

(2) But the relation between members of an incorporated company or association is not a partnership within the meaning of the Act. 60 Vic. (Man.), c. 24, sec. 1.

Ord. (1899) N. W. T., cap. 7, s. 3, sub-sec. 2, reads:—"The relation between members of any company or association

who constitute a body corporate under any law in force in the Territories," instead of as in the Manitoba Act.

The definition given in the British Columbia Act, R. S. B.C., c. 150, sec. 2, is as follows:—

(1) Partnership is the relation which subsists between persons carrying on business with a view to profit.

(2) But the relation between any members of any company or association which is

(a) Registered as a company under the provisions of any Act of the Parliament of the United Kingdom or of the Parliament of Canada, or of the Legislature of the Province of British Columbia for the time being in force, and relating to the registration of Joint Stock Companies, or

(b) Formed or incorporated in or by pursuance of any other Statute or Letters Patent or Royal Charter

is not a partnership within the meaning of this Act.

The Imperial Companies Act provides that a private partnership cannot be formed of more than ten persons for the purposes of banking business, or twenty for the purpose of any other business. There is no such limitation in this country.

For illustration of what has been said to constitute a contract of partnership, see the following cases:—

Wells v. Petty, 5 B. C. R. 353: Where an agreement that plaintiff should be "in on it" was held to give the plaintiff an interest in a mineral claim in the nature of a partnership.

Stevenson v. Boyd, 5 B. C. R. 626; *Martin v. Martin*, 1 N.B. Equity 515; *Merchants Bank v. Thompson*, 3 O. R. 541; *Morison v. Earls*, 5 O. R. 434; *Stuart v. Mott*, 14 S. C. R. 734; *Seiffert v. Irving*, 15 O. R. 173; *Mendlessohn Piano Co. v. Graham*, 19 O. R. 83, 17 A. R. 378; *Kreh v. Bishop*, 17 Can. L. T. 171-278; *Brit. Col. Iron Works v. Buse*, 4 B. C. R. 419. As to position of a club, see *Firmin v. International*, 5 Times, 612, 694; *Overton v. Hewitt*, 3 Times 656.

A partnership may be formed by parol agreement, notwithstanding that it is to deal in land. *Archibald v. McNerhanie*, 35 Can. L. J. 489, 6 B. C. R. 260; affirmed by 29 S. C. R. 564.

But an agreement to assign a share in a partnership, part of the assets of which consists in land, is within the Statute of Frauds, and must be in writing. *Gray v. Smith*, 43 Ch. D. 208. As to whether company can form a partnership with private individuals, see *Roedde v. The News*, 4 B. C. R. 7.

Formerly it was thought that from the fact of participation in profits the existence of a partnership must necessarily be implied. The true rule, however, was laid down in *Cox v. Hickman*, 8 H. L. C. 268, where it was held that, although the sharing of profits was very strong evidence of the existence of a partnership, it was not conclusive, and that the real intention of the parties as shown by the whole transaction must be given effect to. While the appeal to the House of Lords in *Cox v. Hickman* was pending, the case of *Hill v. Bellhouse*, 10 U. C. C. P. 122, was decided by the Court of Appeal for Ontario, and although, as remarked by Hagarty, J., in his judgment, that case may be distinguished from *Cox v. Hickman*, yet the principle on which *Cox v. Hickman* was ultimately decided was there laid down. The extract from Story cited by Hagarty, J., in his judgment, is a clear statement of the law as it was finally settled.

"The question is whether the circumstances under which the participation in the profits exist may not qualify the presumption and satisfactorily prove that the portion of the profits is taken, not in the character of a partner, but in the character of an agent, as a mere compensation for labor and services. If the latter be the true predicament of the party, and the whole transaction admits, nay, requires, that very interpretation, where is the rule of law which forces upon the transaction the opposite interpretation and requires the Court to pronounce an agency to be a partnership contrary to the truth of the facts and the intention of the parties? Now, it is precisely upon this very ground that no such absolute rule exists, and that it is a mere presumption of law which prevails in the absence of controlling circumstances, but is controlled by them, that the doctrines in the authorities alluded to are founded. If the participation in the profits can be clearly shewn to be in the character of agent, then the presumption of partnership is re-

pelled. In this way the law carries into effect the actual intention of the parties, and violates none of its own established rules."

The above principle is recognized and embodied in section 2 of the Act. This section contains a number of what may be called negative definitions of partnership, or declarations of what partnership is not, or, as it is put by Pollock, p. 15 of Partnership Act, "It excludes in the first and second sub-sections various relations which at first sight may appear to resemble partnership but do not really satisfy the fundamental conditions 'of carrying on a business in common, with a view to profit.'"

Section 2 is as follows:—

2. In determining whether a partnership does or does not exist regard shall be had to the following rules:—

(1) Joint tenancy, tenancy in common, joint property, common property, or part ownership, does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which, or from the use of which, such returns are derived.

(3) The receipt by a person of the share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of the business does not of itself make him a partner in the business and in particular—

(a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;

(b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of a business does not of itself make the servant or agent a partner in the business or liable as such;

(c) A person being the widow or a child of the deceased

partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business, or liable as such;

- (d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business, or liable as such, provided that the contract is in writing, and signed by or on behalf of all the parties thereto;
- (e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the good-will of the business is not by reason only of such receipt a partner in the business or liable as such. 60 Vic. (Man.), c. 24, s. 2; R. S. B. C., c. 150, s. 3; N. W. T. Ord., 1899, c. 7, s. 4.

As to what will constitute partners inter se, see *Martin v. Martin*, 1 N. B. R. Equity 515.

Sec. 2, sub-s. 3.—(a) “The receipt by a person of a share of the profits is prima facie evidence, etc.”

This wording is criticized by Lindley, who points out (*Partnership Act*, pp. 18 and 19) that the meaning of the rule which this section is intended to set forth is explained in *Baddely v. Consolidated Bank*, 38 Ch. D. 238.

“It may be, and probably is, true that if all that is known is that one person carries on a business and shares the profits of that business with another prima facie, those two are partners, and prima facie the person carrying on the business is carrying it on as the agent of the persons with whom he shares its profits. . . . but when you have a great deal more to consider, it appears to me to be a fallacy to say that you are to proceed upon the idea that sharing profits prima facie creates a partnership or an agency, and that prima facie presumption has to be rebutted by something else.”

Sect. 2, s.-s. 3 (b):—See R. S. O., 157, ss. 3 and 4.

The Common Law does not require the contract to be in writing, and it has been decided that there is nothing in the Act to vary the rule. In *re Fort ex-p. Schofield* (1897), 2 Q. B. 495.

Lender receiving interest varying with profits, etc., postponed to other creditors.

Section 3 provides that:—

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a good-will in consideration of a share in the profits of the business being adjudged a bankrupt or insolvent entering into an arrangement to pay his creditors less than (one hundred cents on the dollar), or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the good-will shall not be entitled to recover anything in respect of the share of profits contracted for until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. 60 Vic. (Man.), c. 24, s. 3; R. S. B. C., c. 150, s. 4; N. W. T. Ord., 1899, c. 7, s. 5.

See in *re Mason ex-p. Bing.*, 1899, 1 Q. B. 810.

This section, and subsection 3, b, c, d, and e of section 2, are practically re-enactments of the Act known as Bovill's Act, 28 and 29 Vic., c. 86, the provisions of which (see sections 1 and 5 of Bovill's Act), to some extent correspond with the provisions of the Acts respecting limited partnerships, which are in force in all the Provinces of this country, and to the partnership *en Commandite* of the Civil Law. Story, speaking of these limited partnerships, says (7th Ed., paragraph 74, note 5): "Partnerships *en Commandite*, as established by the laws of the several States, are often called limited partnerships. Paragraph 78. Partnerships *en Commandite* are defined to be limited partnerships "where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called *Commanditaire*, or partners *en Commandite*, the busi-

ness being carried on under the social name or firm of the general partners only composed of the names of the general or complimentary partners, the partners *en Commandite* being liable only to losses to the extent of the funds or capital furnished by them."

The subject of limited partnerships will be dealt with in Part II.

QUEBEC LAW.

CHAPTER I.

NATURE OF PARTNERSHIP, AND WHAT CONSTITUTES A PARTNERSHIP.

- Sec. 1. Nature of Partnership.
- Sec. 2. Participation in Profits.
- Sec. 3. Cases in which Partnership held not to exist.
- Sec. 4. Commencement and Duration of Partnership.
- Sec. 5. Proof of Partnership.
- Sec. 6. Capacity to enter into Partnership.
 - (1) Minors;
 - (2) Interdicts;
 - (3) Married Women;
 - (4) Special Incapacities;
 - (a) Husband and Wife;
 - (5) Insane Persons.
 - (6) Persons Civilly Dead.
- Sec. 7. Different kinds of Partnership.
 - (1) Universal;
 - (2) Particular;
 - (3) Commercial;
 - (a) General;
 - (b) Anonymous;
 - (c) Limited Partnerships;
 - (d) Joint Stock Companies.

SEC. 1.—NATURE OF PARTNERSHIP.

The articles hereinafter quoted are those of the Civil Code. A sketch of their origin and the general plan to be followed

in this work may be found in the introductory chapter (ante p. 9).

C. C. 1830.—It is essential to the contract of partnership that it should be for the common profit of the partners, each of whom must contribute to it property, credit, skill or industry.

This is the sole article of the Civil Code which can be likened to a definition of partnership. An excellent one is, however, given by Pothier to the following effect:—

“Partnership is a contract by which two or more persons place or oblige themselves to place, in common, something for the purpose of making, in common, an honest profit, of which they reciprocally bind themselves to render an account.” Pothier (Bugnet), *Société*, No. 1.

Article 1830 is drawn from the Roman Law, and by the codifiers is, with Article 1831 (post p. 19), considered to include the essential conditions of the contract. It conforms in substance to Articles 1832 and 1833 of the Code Napoleon.

The contract is a consensual one, formed by the consent alone of the contracting parties, and which is perfect the moment that they have each agreed to contribute something in common, although they may not yet have furnished their share. It need not be in writing. A valid contract of partnership may be made verbally. It is synallagmatic, each of the parties binding himself reciprocally towards the others; and it is commutative, each expecting to receive as much as he gives. Pothier, *Société*, Nos. 4 et seq.

From article 1830 it is evident that there are three essentials to the contract:—First, that each contributes something to the partnership, whether money, property, credit, skill or industry; second, that it be for the common profit of the partners; and, third, that the parties propose to make a certain profit in which each of the contracting parties can hope to have a share, in proportion to what he has contributed to the partnership.

It is to be particularly noted that, as respects both partners and third parties, partnership is, in the Province of Quebec, regarded as a *moral being*, as a third person, which has its

rights and obligations distinct from the rights and obligations of each of the partners.

This new being, under the firm name adopted by the partners, can acquire and own property distinct and apart from the individual property of the partners, contract, oblige itself and oblige others towards it. It has practically the powers of a corporation, and is ruled by practically the same principles, namely, that of a judicial person existing outside of the individuality of its members. *Duranton*, vol. 17, Nos. 334 and 338; *Troplong*, vol. 1, *Société*, No. 58, and other French authors; Thesis by J. J. Beauchamp, Q.C., 1 R. L. N. S., 81; *Crépeau v. Boisvert*, R. J., 13 C. S., 405.

SEC. 2.—PARTICIPATION IN PROFITS.

C. C. 1831.—Participation in the profits of a partnership carries with it an obligation to contribute to the losses.

Any agreement by which one of the partners is excluded from participation in the profits is null.

An agreement by which one partner is exempt from liability for the losses of the partnership is null only as to third persons.

This article is founded on the Roman Law and conforms, generally, to article 1855 of the Code Napoleon. It is to be noted, however, that the restriction as to nullity of a stipulation tending to exempt from losses contained in the third paragraph is not found in the Code Napoleon, which, in its terms and intention, provides an absolute nullity, and not merely a nullity as to third persons. The codifiers considered such absolute nullity to be an innovation on the old French Law, which, moreover, differed from the English Law. They, hence, rejected it.

The article presumes the existence of a partnership and contains rules for its governance.

The jurisprudence was, for a time, contradictory, on the question as to whether the sharing of profits alone constituted a partnership, and rendered him, who shared them, liable to third persons for debts incurred in the firm name. *Pratt v. Berger*, 28 L. C. J., 192; 33 L. C. J., 136; *Davie v. Sylvestre*, 18 R. L., 148, Q. B.; *Hudon v. Vallee*, 18 R. L., 551; *Rinfret*

v. May, M. L. R., 6 S. C., 437; McFarlane v. Fatt, M. L. R., 6 Q. B., 251; Carter v Grant, R. J., 2 C. S., 499.

However, in 1893, in the case of Reid & McFarlane, R. J., 2 B. R., 130, the Court of Queen's Bench, in conflict with some of the decisions previously rendered by the same Court, laid down the rule in reference to this question, and gave to this article the following interpretation, which is still in force. Sir A. Lacoste, C. J., said:—"We only see here one of the articles governing the contract of partnership. This rule is of the essence of partnership, but it is not the only essential element. This article 1830 (ante p. 18) tells us that it is of the essence of the contract of partnership, that there should be a contribution from each partner for the common benefit. There can be a division of profits without contribution by one of the parties. Thus one person may promise a share in the profits of his business in payment of services already rendered. In such case there would not be a partnership, seeing that there would not be a contribution on the part of one of the parties, notwithstanding participation in the profits."

"These are not the only essential elements. The contract of partnership is subject to the essential conditions of other contracts. Thus, consent is necessary to create a partnership. On the other hand, consent presupposes the intention to make a like contract. Hence it is necessary that the Court should reach the conclusion that the parties had the intention of creating a partnership before declaring that there is a partnership."

"*Sharing in profits does not then constitute in itself, alone, the contract of partnership.* It is necessary to find in it the other essential elements of partnership, namely, the contribution for the common benefit, and the intention of the parties to form a partnership, and this applies to third parties who are creditors, as well as to the parties among themselves. For a contract cannot be a lease, a hiring or a loan between the parties and, at the same time, a partnership as respects third parties. What the Court has first to determine is the nature of the contract of the parties inter se.

"If it reaches the conclusion that it is a partnership, the creditors will have a recourse. Otherwise they will be deprived of it." This rule does not apply, of course, where the party has held himself out as a partner, as we shall see later.

From the above it is to be, therefore, noted that the rule in the Province of Quebec does not differ from the English rule laid down in *Cox v. Hickman*, discussed above (*ante* p. 13).

The above case of *Reid v. McFarlane* has been followed by *Lecompte & Duclos* in 1893, R. J., 4 C. S., 336, and by the same Court in *Denis v. The Hudson Bay Co.* in 1899, R. J., 8 B. R., 236. From the latter decision, however, Mr. Justice Langelier dissented on the ground that participation in the profits of a business creates a presumption of partnership, which he, who has stipulated for this participation, ought to destroy. This, in his opinion, the party in this case had not done. His view was not accepted by the majority of the Court.

The case of *Singleton v. Knight*, a decision of the Privy Council, 13 App. Cas., 788, also bears upon this question of the sharing of profits; but the Court of Queen's Bench in *Reid v. McFarlane*, above quoted, did not consider that it could be invoked as deciding this question. In that case the principle laid down was that one of the partners could not draw his fellow-partners into partnership with a third party without their knowledge or consent.

SEC. 3.—CASES IN WHICH PARTNERSHIP HELD NOT TO EXIST.

The construction of an aqueduct by different proprietors, for the common use of their respective properties, does not constitute a partnership between them; and, if one of these proprietors abandons his property, he cannot ask for the participation or licitation of this aqueduct. *Michon v. Bousquet*, 19 R. L. 504; M.L. R., 6 Q. B., 337.

The possession in common by several individuals of a mine, of which the title is in the name of one of them alone, does not constitute a partnership, but a community of property. *C. R., Provençal v. Nadeau*, R. J., 9 C. S., 344.

A lease by which it is stipulated that the rent will be a

share of the profits resulting from the business of the tenant, does not constitute a partnership between landlord and tenant. Q. B., *Prefontaine v. Barrie*, 13 Q. L. R., 312.

The contract by which the owner of an article charges another with the sale of it, with the stipulation that the latter shall have for his remuneration the surplus of the price of the sale in excess of a specified sum, constitutes a "mandate for reward," and not a partnership. C. R., *Stafford v. Smith*, R. J., 10 C. S., 470.

Where L. bought from B. for \$1,000, a half interest in a patent, and B. engaged (*se fait fort*) to inaugurate and form a company to carry into operation the object of the patent before a fixed date, but failed to do so, no partnership was constituted, and L. was entitled to recover his \$1,000. C. R., *Laviolette v. Blossé*, M. L. R., 1 S. C., 429.

The Court of Queen's Bench has decided that if a retiring partner has left his capital in the new firm, and agrees that it shall rank after the creditors, he is not thereby constituted a partner. The Supreme Court, however, in this case held the dissolution to have been simulated. *McLaren v. Merchants Bank*, R. J., 2 B. R., 431; and 23 S. C. R., 143.

W. and D. entered into a joint speculation in the purchase of real estate. Each looked after his individual interest in the operations resulting from this co-partnership. No power of attorney or authority was given to enable one to act for the other, and they did not consider that any such authority existed by virtue of the relations between them. All conveyances, required to carry out sales, were executed by each for his undivided interest. Upon the death of W. and D., the business was continued by their representatives on the same footing, and the representatives of W. subsequently sold their interest to T. W., who purchased on behalf of and to protect some of the legatees of W., without any change being made in the manner of conducting the business.

A book-keeper was employed to keep the books required for the various interests, with instructions to pay the moneys received at the office of the co-proprietors into a bank, whence they were drawn upon cheques bearing the joint signatures

of the parties interested. The profits were divided equally between the representatives of the parties interested, some in cash, but generally by cheques drawn in a similar way. M. N. D., who looked after the business of the representatives of D., paid diligent attention to the interests confided to him and received their share of such profits; but J. C. B., who acted in the W. interest, so negligently looked after the business as to enable the book-keeper to embezzle moneys, which represented part of the shares of the profits coming to the representatives of W.

In an action brought by the representatives of W. to make the representatives of D. bear a share of such losses, it was held by the Supreme Court, confirming the judgment of the Superior Court and of the Superior Court sitting in Review, that the facts did not establish a partnership between the parties, but a mere ownership *par indivis*, and that the representatives of D. were not liable to make good any part of the loss, having by proper vigilance and prudence obtained only the share which belonged to them. Even if the partnership existed, there would be none of the moneys paid over to the parties after a division* made. *Archambault & de Lisle*, 25 S. C. R., 1.

SEC. 4.—COMMENCEMENT AND DURATION OF PARTNERSHIP.

C. C. 1832.—If no time for the commencement of the partnership be designated, it takes effect from the date of the contract.

C. C. 1833.—If the term of the partnership be not designated, it is considered to be for the life of the partners.

This is subject to the provisions contained in the chapter on Dissolution of Partnership.

SEC. 5.—PROOF OF PARTNERSHIP.

We have seen that the contract of partnership need not be in writing (*ante* p. 18).

Third parties may prove its existence by testimony. *Rowan v. Massé*, M. L. R., 1 S. C., 177; *Graham v. Bennett*, 12 R. L., 448; *Peoples Bank v. Gauthier*, R. J., 14 C. S., 18.

But the parties themselves cannot make proof of a partnership between them, by testimony, unless there is a commencement of proof in writing. *Beaudry v. Laflamme*, 6 L. C. J., 134; *Pratt v. Berger*, 28 L. C. J., 192; *Lemire v. Bourdeau*, 12 R. L., 362; *Rowan v. Massé*, M. L. R., 1 S. C., 177; *McIndoe v. Pinkerton*, M. L. R. 4 C. S., 102.

SEC. 6.—CAPACITY TO ENTER INTO PARTNERSHIP.

All are capable of entering into the contract of partnership, except, (1) Minors, save in certain cases; (2) Interdicted persons; (3) Married women, save in certain cases; (4) Those who, by special provisions of law, are prohibited from contracting by reason of their relation to each other, or of the object of the contract; (5) Persons insane or suffering a temporary derangement of intellect arising from disease, accident, drunkenness or other cause, or who by reason of weakness of understanding are unable to give valid consent; (6) Those civilly dead. C. C. 986.

(1) *Incapacity of Minors.*

The incapacity of minors is established in their favor. Parties capable of contracting partnership cannot set up the incapacity of minors with whom they have contracted. C. C. 987. The nullity which attaches to the contract of the minor is a purely relative one, which he may or may not raise, as he pleases.

As respects *Civil* partnerships (for distinctions between Civil and Commercial partnerships, see post pp. 27-28), the minor must allege and prove lesion or injury in order to escape from his liability. C. C. 1002; *Q. B., Métrisse v. Brault*, 4 L. C. J., 60; *C. R., Gagnon v. Sylva*, 24 L. C. J., 251; *C. R. Verner v. Lortie*, 1 Q. L. R., 234.

As respects *Commercial* partnerships, on the other hand, it is questionable as to whether the minor is subject to any incapacity. The principles of the law are that a minor engaged in trade is reputed of full age for all acts relating to such trade (C. C. 323); and that a minor, who is a banker, trader or mechanic, is not relieviable for cause of lesion from con-

tracts made for the purposes of his business or trade. (C. C. 1005). These principles should be interpreted and read together. (Mignault, Dr. Civ. Can., p. 266.) The question is whether a contract of commercial partnership made by a minor who is a trader, a banker or a mechanic, is "an act relating to his trade or made for the purpose of his business?" The question does not appear to have been decided, and is open to discussion; but we think the minor is, under such circumstances, fully capable of entering into the contract and that he is unable to attack it for cause of lesion.

In any event, there can be no doubt that a minor member of a commercial partnership is liable to third parties dealing with the partnership as an ordinary member would be. C. R., *Danaï v. Coté*, 5 L. C. R., 193; *City Bank v. Lafleur*, 20 L. C. J., 131.

A minor, when emancipated, can enter into any contract of partnership absolutely binding upon him, provided he has obtained the authorization of a family council and of a judge. *Beaudry-Lacantinerie, Société*, No. 61.

(2) *Incapacity of Interdicts.*

Persons of full age may be interdicted who are in an habitual state of imbecility, insanity, madness (C. C. 325) or drunkenness (C. C. 325a); or who commit acts of prodigality, which give reason to fear that they will dissipate the whole of their property (C. C. 326); or who make use of opium or other narcotics to excess. (C. C. 336a, added by 59 Vic., cap. 40.)

The incapacity of those interdicted for *prodigality* is established in their favor. Parties capable of contracting cannot set up the incapacity of such interdicts, with whom they have contracted. (C. C. 987.) Their incapacity is merely relative and not absolute, and their obligations may be avoided in the same manner as those of minors. The same applies to acts done by those to whom an adviser has been given, without the assistance of such adviser.

The incapacity of all other interdicts is absolute. C. C. 334.

(3) Capacity of Married Women.

A wife, even when separate as to property, cannot enter into a contract of partnership without the express authorization of her husband. Care should be taken that it be in writing.

If the partnership be a commercial one, the wife thereby becoming a public trader, the authorization of the husband may be either express or implied; but the wife, as such public trader, cannot commence business before registering the special declaration, referred to later in the chapter concerning Registration of Partnership.

When she so becomes a trader and a partner, she may, without the further authorization of her husband, obligate herself, and also her husband, if there be community between them, for all that relates to her commerce.

When the wife has become separated from her husband as to bed and board, she can enter into partnership without his authorization. C. C. 177 and 179; Beaudry-Lacantinerie, Société, No. 50.

*(4) Special Incapacities.**(a) Husband and Wife.*

It is generally conceded that husband and wife cannot enter into partnership with each other, since to do so would be to conflict with the principle that the matrimonial relations should remain unchanged. (C. C. 1265.) The absolute equality, also, which exists between partners, would be in conflict with the relationship of husband and wife, which the consorts cannot alter. In short, partnership between husband and wife would facilitate disguised benefits of one to the other, which are forbidden by the law. Beaudry-Lacantinerie, Société, Nos. 52, 53, 54, 55, 56, 57.

Partnerships between the two consorts and a third party are also null for the same reasons. Id. 58.

Number five of the above enumeration of incapables explains itself. (Ante p. 24.)

(6) *Those Civilly Dead.*

Civil Death results from condemnation to death or from condemnation to any other corporal punishment for life. It also results from certain religious vows. C. C. 31, 32, 33, 34.

SEC. 7.—DIFFERENT KINDS OF PARTNERSHIP.

It is advisable to insert here the definitions of the different kinds of partnership given by the Civil Code, in order that the succeeding references to the law of the Province of Quebec may be the more readily understood.

C. C. 1857. Partnerships are either universal or particular. They are also either civil or commercial.

(1) *Universal Partnerships.*

C. C. 1858. Universal partnership may be either of all the property or of all the gains of the partners.

C. C. 1859. In universal partnership of property all the property of the partners, moveable and immoveable, and all their gains, as well present as future, are put in common.

C. C. 1860. Parties contracting a universal partnership are presumed to intend only a partnership of gains, unless the contrary is expressly stipulated.

C. C. 1861. In a universal partnership of gains is included all that the partners acquire by their industry in whatever employment they are engaged during the continuance of the partnership. The moveable property and the enjoyment of the immoveables possessed by the partners at the date of the contract are also included; but the immoveables themselves are not included.

Universal partnerships, it is almost unnecessary to add, are extremely rare, and hence require no comment here.

(2) *Particular Partnerships.*

C. C. 1862. Particular partnerships are those which apply only to certain determinate objects. A partnership contracted for a single enterprise or for the exercise of any art or profession is also a particular partnership.

(3) *Commercial Partnerships.*

C. C. 1863. Commercial partnerships are those which are contracted for carrying on any trade, manufacture or other business of a commercial nature, whether general or limited, to a special branch or adventure. All other partnerships are civil partnerships.

There is little difficulty in distinguishing Civil from Commercial partnerships. Those with which we have to deal are almost wholly the latter. Their distinguishing feature is that they must be for the carrying on of some trade, manufacture or other business of a commercial nature. (For discussion as to what constitutes "business of a commercial nature," see *Revue de Legislation*, vol. 2, p. 442, and vol. 3, pp. 1 and 41.)

The status or occupation of the partners themselves is no criterion. Thus, a partnership between a sheriff, a lawyer and a merchant for the working of a saw mill (*Couturier v. Brosard*, 18 L. C. J., 8); between official assignees and a notary for the business of assignees and brokers (*Loranger v. Dupuis*, 5 L. N., 179); between contractors for the purpose of building railways (*McRae v. McFarlane*, M. L. R., 7 S. C., 288); between contractors for the cutting and flotation of logs, (*Peoples Bank v. Gauthier*, R. J., 14 C. S., 18); have all been held to be commercial partnerships.

On the other hand partnerships between persons for the trafficking in real estate (*Girard v. Trudel*, 21 L. C. J., 295), and between architects (*Manseau v. Brodeur*, 1 P. R., 192) have been held to be civil partnerships. In fact, all partnerships between professional men for the practice of their professions are civil partnerships.

C. C. 1864. Commercial partnerships are divided into:

1. General partnerships;
2. Anonymous partnerships;
3. Partnerships *en Commandite*, or limited partnerships;
4. Joint stock companies.

They are governed by the rules common to other partnerships, when these are not inconsistent with the rules contained in this section, and with the laws and usages specially applicable in commercial matters.

(a) General Commercial Partnerships.

C. C. 1865. General partnerships are those contracted for the purpose of carrying on business under a collective name or firm consisting ordinarily of the names of the partners, or one or more of them, all of whom are jointly and severally liable for the obligations of the partnership.

(b) Anonymous Partnerships.

C. C. 1870. In partnerships having no name or firm, whether they are general or confined to a single object or adventure, the partners are subject to the same liabilities in favor of third persons as in ordinary partnerships under a collective name.

The principles governing the foregoing will be treated of conjointly in the two succeeding chapters.

*(c) Limited Partnerships.**(d) Joint Stock Companies.*

As has been stated (ante p. 10) partnerships *en Commandite* or limited partnerships form the subject of Part II. With joint stock companies, we have nothing to do in this work.

Note.—Mining partnerships are unknown in the Province of Quebec as a distinct class.

CHAPTER II.

RELATIONS OF PARTNERS TO THIRD PERSONS.

This chapter will be sub-divided as follows:—

Sec. 1. Every partner an agent for his co-partner.

Sec. 2. Doctrine of Holding Out.

(i) Retired partner allowing himself to be held out as partner in the old firm.

(a) When he is supposed to be a partner.

(b) When he is known not to be a partner.

Sec. 3. Nature of Partnership liability.

(a) In the case of Contracts.

(b) In the case of Torts.

Sec. 4. Notice to and admissions by Partners.

Sec. 5. Novation. Incoming and retiring Partners.

Sec. 6. Notice to Creditors that Partners occupy the position of principal and surety towards each other.

Sec. 7. Effect on Guaranty of change in firm.

SEC. I.—EVERY PARTNER AN AGENT FOR HIS CO-PARTNER.

Every partner is an agent of the other partners for the purposes of the business of the partnership, but only those acts which are done in the usual course of business will bind the other partners. This is really only a particular instance of the general rule that an agent can bind his principal when acting within the scope of the business which he is conducting for him, but can bind him only when so acting, which in its turn is a particular instance of the still more general rule that if a person makes a representation intending that third parties should act on it, and a third person does act on it, the person making such representation will be estopped from denying its truth. If a man represents to the world that another is his

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partner, he makes a representation that that other has a right to act as his agent within the scope of the partnership business, but he does not make a representation that such other has a right to act for him in relation to any other business, consequently there will be no estoppel when a partner is acting outside the scope of a partnership business, or when he pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, or when he is acting contrary to his authority to the knowledge of those with whom he is dealing. Even where it is necessary for the preservation of the principal's property, it has been held that the principal will not be bound if such act is outside the ordinary scope of the business. *Hawtayne v. Bourne*, 7 M. and W. 595. *Ex p. Chippendale*, 4 De G. M. and G. 19, *Simpson's Claim*, 36 Ch. D. 532.

These principles are embodied in sections 5, 6 and 7 of the Act, which are as follows:—

5. Every partner is an agent of the firm and his other partners for the business of the partnership, and the acts of any partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know and believe him to be a partner. 60 Vic., Man., c. 24, s. 5; R. S. B. C., c. 150, s. 6; N. W. T. Ord., 1899, c. 7, s. 7.

6. An act or instrument relating to the business of the firm, and done or executed in the firm name, or in any other manner, shewing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners. Provided, that this section shall not effect any general rule of law relating to the execution of deeds or any negotiable instruments. 60 Vic., Man., c. 24, s. 6; R. S. B. C., c. 150, s. 7; N. W. T. Ord., 1899, c. 7, s. 8.

7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary

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course of business, the firm is not bound unless he is in fact specially authorized by the other partners, but this section does not affect any personal liability incurred by an individual partner. 60 Vic., Man., c. 24, s. 7; R. S. B. C., c. 150, s. 8; N. W. T. Ord., 1899, c. 7, s. 9.

The cases which have been decided in the Canadian Courts dealing with a partner's authority to bind his co-partners, and illustrative of the above principles, may be classified under the following headings:—

- 1 Generally.
2. Right to bind firm by negotiable instruments.
3. Right to borrow money.
4. Taking in the firm name a security involving the assumption of a liability.
5. Right of partner to receive payment of debts due the firm.
6. Right of partner to give guaranty.
7. Execution of deeds by partners.

(1) *Generally*.—Where a partner pledges the credit of the firm for a purpose apparently not connected with the firm business, the entry of the transaction in the firm books to which the other partners have access is not sufficient to fix the firm with liability. *Fisher v. Linton*, 28 O. R., 322.

If one partner borrows money professedly for the purpose of the firm, but acknowledges that he is desirous of concealing the transaction from the other members of the firm, this is a circumstance sufficient to rebut the presumption of implied authority, and the person advancing the money cannot recover from the firm if it turns out that the partner had not special authority. *McConnell v. Wilkins*, 13 A. R. 438.

The implied power of a partner does not extend to giving the partnership name to secure the debt of a third person. *Wilson v. Brown*, 6 A. R. 411.

It is outside the ordinary scope of a solicitor's business to give promissory notes. *Ib.*

As to liability of solicitor for fraudulent conduct of partner, see re *McCaughey v. Walsh*, 3 O. R. 425; re *Ross*, 16 Pr. R.

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482 (Ont.); for negligence of partner, see *Thompson v. Robinson*, 16 A. R. 175 (Ont.); see also *O'Regan v. William*, 24 N. S. R. 165.

(2) *Liability of Firm on Negotiable Instruments.*—A firm is not liable on a negotiable instrument made, drawn or endorsed in the name of one partner only, unless his name happens to be the firm name. See *Lindley*, 6th Ed., p. 190-1; *Goldie v. Maxwell*, 1 U. C. Q. B. 424; *McCord v. Field*, 27 U. C. C. P. 391; *Annis v. Lewis*, 5 O. S. 198 (Ont.); *Hoovey v. Cassels*, 30 U. C. C. P. 230.

If a creditor takes the note of one partner for the debt of the partnership, and after bringing an action fails to recover thereon, he is not precluded from afterwards claiming the amount of the note against the partnership. *Carruthers v. Ardagh*, 20 Gr. 579 (Ont.).

Where a note was endorsed in the firm name, and the plaintiffs who discounted it knew that it was endorsed as security for a third person, and had no reason to believe that it had any connection with the partnership business, the firm was held not liable. *Federal Bank v. Northwood*, 7 Ont. R. 389.

Where a man is member of more than one firm, and gives a note of one firm in satisfaction of a debt due by the other, the person taking the note is put on enquiry as to his authority to sign the name of the other firm to the note. *Creighton v. Halifax Banking Company*, 18 S. C. R. 140. See also *Wilson v. Brown*, *supra*; *Bell v. Ottawa Trust and Deposit Company*, 28 Ont. R. 519.

When one partner consents to his co-partner signing the firm name for a private debt, he is jointly liable, and not merely liable as surety, even after dissolution. *Pittfield v. Trotter*, 35 Can. L. J. 457.

See also the following cases, in which instruments were held not binding on the partnership:—*Beals v. Sheldon*, 4 O. S. 302 (Ont.); *Harris v. McLeod*, 14 U. C. Q. B. 164; *Royal Can. Bank v. Wilson*, 24 U. C. C. P. 362; *Union Bank v. Bulmer*, 2 Man. R., and see also *Bank of Commerce v. Wilson*, 36 U. C. Q. B. 8, in which latter case the partnership was held to be bound.

As to mutual authority to sign and endorse negotiable instruments, see *Workman v. McKinstry*, 21 U. C. Q. B. 623.

(3) *Right to borrow money.*—Where a partnership is entered into for the purpose of buying and selling lands, the lands acquired in the business are in equity considered as personality. The active partner has an implied authority to borrow money on the security of mortgages, and where an amount so borrowed is paid by cheque made payable to all the partners by name, the active partner having the right to receive the cash, has also the right to endorse his partners' names on the cheque, and the drawers have the right to assume that he did it for partnership purposes. *Manitoba Mortgage Co. v. Bank of Montreal*, 17 S. C. R. 692.

In *Robertson v. Jones*, 208 N. B. R. 267, three judges held that the firm were not liable for money borrowed by one of the members, and applied to firm purposes, two were of opinion that plaintiff was entitled to recover from the firm, and see *Hudson Bay Co. v. Stewart*, 6 Man. R. 8; *Day v. McLeod*, 18 U. C. Q. B. 256.

(4) *One Partner taking in the firm name a security involving the assumption of a liability.*—One partner has implied authority to accept, in the ordinary course of business, security for a debt due to his firm, but he cannot as a rule accept a security with a liability attached, such as shares on which calls are unpaid, or a conveyance of an equity of redemption with a term binding the firm to pay or assume the mortgage, and he cannot take even paid up shares in satisfaction of a debt without special authority. *Lindley*, 6th Ed., p. 153.

In *Weikersheim's case*, L. R. 8, Ch. 831, it was held that one partner in a firm of bankers had implied authority to accept as security for a debt shares in a company, although he thereby rendered himself and his co-partners liable as contributories to the company, but this case, and also *Lindley's* note on it, was explained in *Nieman v. Nieman*, 43 Ch. D. 198, where it was pointed out that in the *Weikersheim* case all the partners in fact assented, and, further, that the judges who decided that case were of opinion that in the business of bank-

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ers it was so ordinary to take shares in a company as security for a debt that it was part of the implied contract between them. Both these cases, the Weikersheim case and Nieman v. Nieman, are discussed in *Hamilton Provident v. Steinhoff*, 23 App. R. 184 (Ont.). In that case two partners in a banking firm took from a customer as security for his indebtedness to them a conveyance to them individually of certain land, which was subject to mortgage. Subsequently, upon the mortgagees (the plaintiffs) threatening proceedings, one of the partners, without the knowledge or consent of the other, signed in the firm name a covenant under seal to pay the arrears due on the mortgage. It was held that this bound only the partner who signed it.

As to one partner binding another to accept shares in a company, see *Gurney v. Moore*, 21 U. C. Q. B. 127.

In *Fraser v. McLeod*, 8 Gr. 268 (Ont.), it was held that where one member of a mercantile firm, without the knowledge of his co-partner, purchased lands subject to incumbrance from a debtor of the firm in his own name, and to discharge such incumbrance gave notes in the name of the firm, but without the knowledge of his co-partner, the partnership was not liable, although it was alleged that the arrangement had been made in order to more effectually secure the debt due to the firm.

(5) *Payment to Partnership*.—*Brunskill v. Chumasero*, 5 U.C. Q. B. 474. A and B., partners, agree to sell to C. 500 barrels of flour at so much per barrel, to be paid per hundred barrels after delivery, and upon production of the wharfinger's receipt. The son of A. came to C. with the wharfinger's receipt for one hundred barrels. C. gave him a cheque for the amount due in favor of the firm, and took his receipt. As the son was leaving, C.'s clerk, but without C.'s authority, reminded him of a private note of his father's to C. for £40 then due. A.'s son, with the proceeds of C.'s cheque, took up the note for £40; B., the other partner, in consequence, refused to send C. any more flour until the £40 was made good. Held, that the payment to A.'s son under such circumstances

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was such a payment to the partnership as acquitted C. upon the whole sum paid, but if there had been a previous understanding it would not have done so. Any of the partners in the absence of an agreement to the contrary could receive the money, or any one bringing their authority.

And see *Van Wart v. Critchley*, 17 Can. L. T. 316; *Beckwith v. Lordley*, 1 N. S. D. 72 (Gill and Oxley).

(6) *Giving of guaranty by one Partner.*—In *City Glasgow Bank v. Murdock*, 11 U. C. C. P. 138, a plea that a bill was accepted by one partner for accommodation, and without any consideration, and without any authority of the other partners, and that such acceptance was beyond the scope and object of the business, was held insufficient because the assent of the firm is to be presumed by the use of the name of the firm by one of the partners. And the onus probandi rests on those seeking to rebut the presumption. It should have been shewn that the acceptance had no reference to any transactions between the drawers and the firm. This case was decided on the authority of *Sandilands v. Marsh*, 2 B. & Al. 673.

But see *Lindley*, 6th edition, p. 150, where it is said in commenting on this latter case:

"The later cases, however, decide that unless it can be shown that the giving of guarantees is necessary for the carrying on the business of the firm in the ordinary way, one of the members will be held to have no implied authority to bind the firm by them."

See *Stewart v. Parker*, 2 P. and B. 223, N. B.; *Marks v. Wright*, Hill T., 1828, N. B. Also *Federal Bank v. Northwood*, supra. *Union Bank v. Bulmer*, 7 Can. L. T. 277, and *Story Partnership*, 7th Ed., sec. 177. "It is not a matter of necessity incident to all sorts of partnerships for one partner to possess the power to bind his co-partners by a guaranty. It must be shewn to be justified either by the usages of the particular trade or business, or by the known habits of the particular partnership, or by the express or implied approbation of all the parties in the case given."

(7) *Execution of Deeds*.—As a general rule a deed in order to bind the firm must be executed by all the partners, but where one partner signs in the name of both in the presence of the other, and for him, with his assent, though there was but one seal it was the deed of both. *Moore v. Boyd*, 15 U. C. C. P. 513.

One partner has not the power and authority without the express consent of his co-partner to execute a deed disposing of all stock in trade, effects and assets of the firm to a trustee to dispose of the same for the general benefit of the creditors of the partnership, for such an assignment would amount to a suspension or dissolution of the partnership itself. *Cameron v. Stevenson*, 12 U. C. C. P. 389.

When one partner authorizes another to obtain an endorser for the purpose of raising money from a bank for the use of the firm, he thereby authorizes his partner to do whatever is reasonably necessary for the purpose. *Halfpenny v. Pennock*, 33 U. C. Q. B. 229.

Even to mortgaging all the stock in trade. *Paterson v. Maughan*, 39 U. C. Q. B. 371.

And one partner may bind the firm by an instrument under seal if the instrument would have been valid without a seal. *Bloomley v. Grierton*, 9 U. C. Q. B. 455.

One of two partners cannot execute an arbitration bond in the partnership name without the authority and consent of the other partner so as to bind the other partners. *Baby v. Davenport*, 3 U. C. Q. B. 54.

When an agreement under seal, but of the nature not requiring a seal, was executed by one of two partners in the name of the firm, and the partners not executing afterwards acted under and received the benefits of it, such agreement was sustained as his deed, and it was held that he could not dispute the authority by which it was executed in his name. *Bloomley v. Grierton*, 9 U. C. Q. B. 455, and see *Howell v. McFarland*, 2 App. R. 31 (Ont.).

An agreement under seal was made between the plaintiffs of the one part and Samuel Farewell & Co. Query.—Whether

this contract as executed by Farewell could bind the other defendants, his partners? *Logan v. Stranahan*, 12 U. C. Q. B. 15.

In the above case the question as to how far execution of a specialty by one partner bound the rest was also raised, but the case was decided on another point. See also *Moore v. Boyd*, 23 U. C. Q. B., 459, and *Harris v. Robertson*, 6 Allen 496, N. B.

SEC. 2.—DOCTRINE OF HOLDING OUT.

The above sections deal with the case of a man representing another to be his partner. Sec. 14 deals with the case of a man who represents himself to be, or allows another to represent him as a partner. This, again, is only another particular instance of the general principle that a man will be estopped from denying the truth of a representation made by him and acted on by third parties.

Sec. 14 is as follows:—

(1) Every one who by words spoken or written, or by conduct, represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to anyone who has acted on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit, by or with the knowledge of the apparent partner making the representation, or suffering it to be made.

(2) Provided that where after a partner's death the partnership business is continued in the old firm name, the continued use of that name, or of the deceased partner's name as part thereof, shall not of itself make his executors' or administrators' estate or effects liable for any partnership debts contracted after his death. 60 Vic. (Man.), c. 24, s. 14; R. S. B. C., c. 150, s. 15.

This representing oneself to be, or allowing oneself to be represented as a partner, is commonly called a "Holding Out."

The phrase might be considered equally applicable to the case of a man representing another to be his partner, but it has generally been confined to the former case.

The leading case on this point is *Waugh v. Carver*, 2 H. Black 235. In that case Chief Justice Eyre, p. 246, says:—

“Now, a case may be stated in which it is the clear sense of the parties to the contract that they shall not be partners. . . But if (one of them) will lend his name as a partner, he becomes as against all the rest of the world a partner, not upon the ground of the real transaction between them, but upon principles of general policy to prevent the frauds to which creditors would be liable if they were to suppose that they lent their money upon the apparent credit of three or four persons, when in fact they lent it to two of them, to whom, without the others, they would have lent nothing.”

The above principle was affirmed by Sir Montague Smith, in *Mallwo v. Court of Wards*, L. R. 4, P. C. 419, at p. 435. See also Lind., 6th Ed., p. 65, and cases there cited.

The following Canadian cases deal with the subject, and affirm the above principle: *McLean v. Clark*, 20 A. R. 660. This case is discussed below, p. 42.

In *Wigle v. Williams*, 24 S. C. R. 713, one of the defences set up was that even if the defendant, who permitted his name to be continued in the firm after retirement, was liable at all, he was only liable for debts incurred in respect of the class of business (that of a general store) which the firm carried on while he was a member, and not in respect of transactions in real estate and investing in securities carried on by the remaining partner after his withdrawal, but it was held that as no public notice of dissolution had been given, and as defendant was aware that his name still appeared in the firm, and was also aware of the general nature of the new business carried on in the firm name, he was liable.

See also the following cases:—*Ray v. Isbister*, 22 A. R. (Ont.) 12; 26 S. C. R. 79; *Reid v. Coleman*, 19 Ont. 93; *McPherson v. Hoskins*, 1 Kerr, 430 (N.B.); *Cameron v. Cameron*, 3 Man. 308.

It does not matter that the person was induced by fraud to hold himself out as a partner, he will still be liable to third

parties who have given credit on the faith of such holding out. Lindley, 6th Ed., p. 67.

And a person may hold himself out or be held out as a partner without being named, or even if his name is refused, provided a description sufficient to identify him is given. *Martyn v. Gray*, 14 C. B. N. S., p. 841.

In *Burt v. Clarke*, 8 Can. L. T. 155, a retired partner was held not liable for a tort committed by the firm, which had continued under the old partnership name, on the ground that he had no knowledge of the continuance. The decision might, however, have been rested on the ground that the doctrine of "Holding Out" has no application to the case of torts from the negligent conduct of a firm when no trust has been put in it. See Lindley, p. 75, *Pollock Partnership Act*, 54-5.

In *re Young v. Parker*, 12 Pr. R. (Ont.), 646, it was held that R. S. O. (1887), c. 5, s. 108, sub-ss. 4, 5 and 6, now R. S. O. 60, s. 112, ss. 4, 5 and 6 (being the sections of the Division Court Act as to service, etc, on firms), are applicable only to persons who are in truth partners, and not to partners by estoppel.

A frequent example of Holding Out is found when a retiring partner allows himself to be held out as a partner in the old firm.

(a) *When he is supposed to be a Partner.*

When a partnership is dissolved, or when a man who is known to be a partner retires, notice must be given, otherwise on the above principle of estoppel the partnership will be assumed to still exist. In *Scarf v. Jardine*, 7 App. Cas. 345, Lord Shelborne at p. 349, citing from Lindley, stated the principle as follows:—

"When an ostensible partner retires, or when a partnership between several known partners is dissolved, those who dealt with the firm before a change took place are entitled to assume, until they have notice to the contrary, that no change has occurred." And he goes on to say: "The principle on which they are entitled to assume it is that of estoppel of a person who has accredited another as his known agent from denying that

agency at a subsequent time as against the persons to whom he has accredited him by any secret revocation."

In the case of customers, special notice should be given, but to persons who had no dealings with the firm, notice by publication is sufficient.

As to what constitutes sufficient notice of dissolution, see *Darling v. Magann*, 12 U. C. Q. B., 471, p. 475.

But when a partner who has retired from a firm is liable by estoppel, the creditor who is entitled to rely on such estoppel must elect whether he will hold the new firm or the old one, and must either rely on the facts or on his rights of estoppel. *Scarf v. Jardine*, L. R. 7, A. R. 345.

Section 36 of the Act provides as follows:—

36. (1) When a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2) An advertisement in the Gazette (the official Gazette of the Province) shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies or who becomes bankrupt, or of a partner who not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively. 60 Vic. (Man.), c. 24, s. 36; R. S. B. C., c. 150, s. 37. And see *N. W. T. Ord.*, 1899, c. 7, s. 38.

(b) When he is known not to be a Partner.

The above principle is quite clear when the person who is induced to give credit by the holding out is under the impression that a partnership exists, but suppose he knows that there is no partnership:

In dealing with this question it may be necessary to consider section 8, which provides as follows:—

8. "If it has been agreed between the partners that any restriction shall be placed on the power of any one or more

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of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement." 60 Vic. (Man), c. 24, s. 8; R. S. B. C., c. 150, s. 9.

In *Alderson v. Pope*, 1 Camp. 404, note to *Galway v. Matthew*, 1 Camp. 403, Lord Ellenborough is reported to have said that "When there is a stipulation between A., B. and C., who appeared to the world as co-partners, that C. should not participate in profit and loss, and should not be liable as a partner, C. should not be liable as such to those who had notice of the stipulation."

Lindley, commenting on this case (see Lindley, 6th Ed., p. 186), says he considers this statement of the Common Law too wide, and at p. 66, dealing with a case in which "ex hypothesi," the person who gives credit knows that the person holding himself out as a partner does not share in the profits, he further says: "His name does not induce credit the less on account of his right to be indemnified by others against any loss falling in the first instance on himself, and although in the case supposed he cannot be believed to be a partner, the lending of his name does justify the belief that he is willing to be responsible to those who may be induced to trust him for payment."

It is only when knowledge of an agreement between partners necessarily involves knowledge that they decline to be responsible for the acts of each other within the ordinary limits that a stranger's right against a firm can be prejudiced by what he may know of the private stipulations between its members.

Lindley further points out at pp. 185-6 that the law in England is now, by sec. 8 of the Partnership Act, settled as contended for by him.

Cp. cases at p. 51, which decide that notice of the relationship of principal and surety between two of his debtors binds a creditor to recognize such relation.

In *McLean v. Clark*, 20 A. R. 660 (Ont.), the Court of Appeal for Ontario seems to have taken a different view.

The facts of that case are as follows:—

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Some time prior to May, 1887, the defendant Clark had been carrying on the business of a general store. He determined to confine himself to the hardware part of the business, and on the 11th of May he entered into an agreement with his co-defendant, Maitland, whereby he transferred his general stock to him, taking back a chattel mortgage. Both businesses were then carried on on the old premises, a partition being put up to separate the hardware business carried on by Clark from the general business sold to Maitland, in other respects the premises were occupied as before. Maitland asked Clark to allow him to use his name. Clark at first objected, but finally consented on condition that a certificate under the Partnership Act should be registered, and the sign Clark, Maitland & Co. was placed over the door. The certificate was registered about six months afterwards. There was some correspondence in evidence, which shewed that after July plaintiffs knew that Clark was not a partner. It appears that before that date they thought he was. Some of the goods were supplied before that date, and some after. Judgment was given for the plaintiffs for goods supplied before, but, as to the goods supplied after that date, it was held that plaintiffs were not entitled to recover, as the real position was known.

If the principle laid down by Lindley, and adopted in sec. 8 of the Act (namely, that it may make no difference whether or not the creditor knows that the person lending his name was not a partner) had been acted on, would not the plaintiffs have had judgment for the price of the goods supplied after July, as well as for those supplied before, because, although they knew that Clark was not a partner, were they not justified in believing that he was willing to be responsible to those who might be induced to trust him for payment? Perhaps the true ground of decision was that there was not such a holding out as to justify them in this belief. Possibly this point must be considered as at least doubtful in those Provinces in which the Act is not in force.

And see *Williams v. Keats*, 2 Stark 290, and *Brown v. Leonard*, 2 Chitty 120.

SEC. 3.—NATURE OF PARTNERSHIP LIABILITY.

(a) In case of contract liability is joint.

Before the case of *Kendall v. Hamilton*, 4 A. C., 504, was decided, there was a popular impression that partnership liability was joint and several. That case, however, decided that it was a joint liability only, except in the case of a deceased partner whose estate is severally as well as jointly liable, subject to the prior payment of his separate debts. The rule laid down in *Kendall v. Hamilton* is stated as follows in section 9:—

9. Every partner of a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his separate debts. 60 Vic. (Man.), c. 24, s. 9; R. S. B. C., c. 150, s. 10; N. W. T. Ord., 1899, c. 7, s. 11.

In order to appreciate the full effect of the above rule; it is necessary to understand the nature of a joint as distinguished from a joint and several liability. In the case of persons jointly liable there is only one cause of action, and therefore a judgment obtained against one or more may be pleaded as a bar to any further claim in respect of that cause of action by any others who are jointly liable. In the case of persons jointly and severally liable, there is a separate cause of action against each one, and a judgment obtained against one will not be a bar to any action against the others.

It follows that, as partners are jointly liable, they must, if it is sought to hold them all, be all sued together, otherwise if judgment were obtained against some it could be pleaded by the others as a bar to any further action against them.

It should perhaps be explained here that, when we say partners are jointly and not jointly and severally liable, we do not mean that each partner cannot be held liable for all the debts of the partnership.

All that is implied is that those who are jointly liable have a right to be sued together, and that, if judgment is obtained

against some, the others cannot afterwards be sued on the same claim. The judgment, however, that is obtained against joint debtors is joint and several, and execution may be issued and the judgment realized against any one of the joint debtors, leaving him to his right of contribution from the others.

"And after his death his estate is also severally liable."

The principle laid down in the latter part of the section was dealt with in *Campbell v. Farley*, 18 Pr. R. (Ont.), 97, at p. 99. Upon the death of a partner "the only liability existing at law was that of the surviving partner, the estate of the deceased partner being only made available through the equities existing in favour of the surviving partners, which the partnership creditors were allowed to make use of." Consequently, it was held in that case that a creditor could not sue the administratrix direct, but that his only remedy so far as the deceased partner was concerned was to have his estate administered. It is pointed out in 19 Can. L. T., p. 122, that some of the dicta in this case appear to ignore sec. 15, R. S. O., 129; R. S. M., c. 146, sec. 57, which provides that:—

In case any one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise still living, and an action pending against such person, but the property and effects of stockholders in chartered banks, or the members of other incorporated companies shall not be liable to a greater extent than they would have been if this section had not been passed.

The effect of this section would seem to be to put the creditor in the same position as if deceased had been severally liable. Query.—Whether it has the effect of giving the creditor the right to rank equally with the separate creditors of the deceased? It can hardly have this effect in Manitoba, because the above section 9 expressly provides that the liability is sub-

ject to the prior payment of his separate debts. It may, however, have this effect in Ontario.

The effect of section 9 was considered in *Friend v. Young*, 1897, 2 Ch. 421.

When F. & Co., a firm of commission agents, procured an order for goods, which was executed by E. & Co., and the goods were delivered subsequent to the death of one of the partners, but in ignorance of his death, and the purchase money was received by his surviving partner, but not accounted for, it was held that the estate of deceased had incurred no obligation under section 9.

"Before the Act the contention would scarcely have been arguable." See judgment of Stirling, J.

It is to be noted that the liability referred to in sec. 9 is a liability which arises *ex contractu*, the liability for tort is a joint and several liability, and is dealt with in sections 10, 11 and 12.

(b) In case of tort liability is joint and several.

10. Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. 60 Vic. (Man.), c. 24, s. 10; R. S. B. C., c. 150, s. 11; N. W. T. Ord., 1899, c. 7, s. 12.

It has been held in *Regina v. Grannis*, 5 Man. L. R., 153, and in *ex parte Howard and Crangle*, 25 N. B. 191, that a joint conviction against partners for breach of a statute is bad.

11. In the following cases, namely:—

(a) Where one partner, acting within the scope of his apparent authority, receives the money or property of a third person, and misapplies it; and

(b) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm, the firm is liable to make good

the loss. 60 Vic., Man., c. 24, s. 11; R. S. B. C., c. 150, s. 12; N. W. T. Ord., 1899, c. 7, s. 13.

See in addition to cases cited by Lindley, p. 166, et seq. Rhodes v. Moules, 1895, 1 Ch. 236.

12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm, while he is a partner therein, becomes liable under either of the last two preceding sections. 60 Vic. (Man.), c. 24, s. 12; R. S. B. C., c. 150, s. 13; N. W. T. Ord., 1899, c. 7, s. 14.

13. If a partner being a trustee improperly employs trust property in the business or on account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein.

Provided as follows:—

- (1) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and
- (2) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control. 60 Vic. (Man.), c. 24, s. 13; R. S. B. C., c. 150, s. 14; N. W. T. Ord., 1899, cap. 7, s. 15.

SEC. 4.—NOTICE TO, AND ADMISSIONS BY PARTNERS.

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm. 60 Vic. (Man.), c. 24, s. 15; R. S. B. C., c. 150, s. 16; N. W. T. Ord., 1899, c. 7, s. 17.

This rule does not apply to a representation made by one partner as to the extent of his authority to bind the firm. Lindley, 6th Ed., 164-5.

In order that such admissions should bind the firm, the person making them must have been a partner at the time they were made. Taylor v. Cook, 11 Pr. 60 (Ont.); Brit. Col. Iron Co. v. Buse, 4 B. C. R. 419.

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs

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operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. 60 Vic (Man.), c. 24, s. 16; R. S. B. C., c. 150, s. 17; N. W. T. Ord., 1899, c. 7, s. 18.

"Who habitually acts in the partnership business." These words exclude dormant partners, and the special partners of our Acts. Where the Act is not in force it is doubtful whether or not the rule contained in the above section applies to such partners.

SEC. 5.—INCOMING AND RETIRING PARTNERS. NOVATION.

Section 17 deals with the rights of third parties as affected by a change in the firm owing to a partner retiring or a new partner being taken in, and with the substituted liability of the new firm for that of the old, which sometimes arises on such a change taking place.

This agreement of substituted liability, which is technically called novation, is an agreement to which the retiring partner, the new firm and the creditor must all be parties. Where the agreement is express, no difficulty is likely to arise, but when it must be inferred from the course of dealing between the parties, the question arises what course of dealing will warrant the implication that an agreement has been made by the new firm to assume the debts of the old, and by the creditor to accept the new firm as debtors in substitution for the old? In practice this question generally reduces itself to the enquiry as to what course of dealing between a creditor and a new firm, which has assumed the debts of the old, will amount to an agreement on the part of the creditor to accept the new firm as debtors in substitution for the old.

In the case of *Bank of Commerce v. Marks*, 19 Ont. R. 450, Boyd, C., at p. 452, said, "In such interweaving of business but slight evidence is needed to shew a substitution of debtors." Nevertheless, in that case, it was held that there was no substitution, as there had been only a single transaction ending with the old firm. What will amount to such an agreement is discussed in the cases cited below. The provisions of the section are as follows:—

17. 1.—A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

2. A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

3. A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement must be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. 60 Vic. (Man.), c. 24, s. 17; R. S. B. C., c. 150, s. 18; N. W. T. Ord., 1899, c. 7, s. 19.

Sometimes the substituted liability is sought to be set up by the creditor, and sometimes by the firm or retired partner.

Cases involving the principles laid down in the above section generally arise in one of three ways.

1. The creditor may be seeking to enforce his debt against the retired partner, and the debt may be a debt contracted,—
(a) While he was a partner, or (b) By the new firm after his retirement, but for which he has become liable on the principle of estoppel by reason of his not having given proper notice of his retirement. This class of case (b) has been discussed at p. 37 supra, and need not be dealt with here.

2. The creditor may be seeking to shew that the new firm has made itself liable for the debt, or

3. He may claim that the debt has been assumed by the new firm without any discharge having been given to the old. In this case novation does not really arise, the creditor merely gets additional security.

When a partner has retired, and no other partner has gone into the firm, the Court is less likely to find an implied agreement to discharge the retiring partner than if the creditor had the additional security of a new partner.

1. Creditor seeking to enforce debt against retired partner. Retired partner held liable.

In *Ray v. Isbister*, 24 Ont. R. 497, 22 A. R. 12, 26 S. C. R.

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79, the fact that the creditor had proved his claim with, and purchased the assets of the partnership from the assignee under an assignment for the benefit of the creditors, in which it was recited that one partner was the only person composing the firm, was held insufficient to shew an election to look to the one partner only.

In *Bresse v. Griffith*, 24 Ont. R. 492, the fact that the creditor rendered an account to the remaining partner for goods ordered by the old firm along with others for which the remaining partner alone was liable, and afterwards accepted promissory notes for the amount required in the firm name, when he knew that the firm was then composed of the remaining partner only, was held insufficient to shew an agreement to look to such remaining partner only, for the facts were quite consistent with an intention on the plaintiff's part to look to both defendants in case the notes should not be paid at maturity.

An intention to look to some or one of several debtors for payment does not of itself shew a novation whereby the others are released.

And see *Bailey v. Griffith*, 40 U. C. Q. B. 418.

2. Creditor seeking to enforce debt against new firm.

In *Henderson v. Killey*, 14 Ont. R. 137, 17 A. R. 456, sub-nomine, *Osborne v. Henderson*, 18 S. C. R. 698, the retiring partner received a number of promissory notes from the continuing partner, which he endorsed to Henderson, the plaintiff. The continuing partner then entered into partnership with Osborne, the defendant, and transferred to the new firm all the assets of his business, his liabilities, including the above promissory notes, being assumed by the new firm, and charged against him. The new firm paid two of the notes, and asked for an extension of time to pay the other, which was refused. It was held by the Supreme Court that the agreement between the continuing partner and the defendant did not make the latter a trustee of the former's property for the payment of his liabilities, and the act of defendant in paying some of the notes did not amount to a novation, as it was proved that plaintiff had ob-

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tained and still held a judgment against the maker and endorser, and there was no consideration for such novation.

In *Seyfang v. Mann*, 27 Ont. R. 631, 25 A. R. 179, which was a case of a creditor setting up the liability of the new firm by way of counter-claim, the facts were that a firm was dissolved, one partner retiring, and a new one taking his place. The notice of dissolution stated that the business would be carried on by the new firm, who would pay the indebtedness of the old firm, who were alone authorized to collect its debts, and by the agreement for dissolution, the partners released each other from all liability, and it was agreed between the partners that all the claims of the old firm belonged to and would be collected by the new. The respondents, who had a claim against the old firm, upon hearing the facts, made their claim against the new firm. It was held that novation had taken place.

See *Hine v. Beddome*, 8 U. C. C. P. 381, and *Polson v. Wulffsohn*, 2 B. C. R. 39.

In *Gurney v. Braden*, 3 B. C. R. 474, where the firm had dissolved, and one of the partners had assumed the liabilities, and had given his own notes in satisfaction of a debt due by the old firm, it was held on appeal, reversing the decision of the trial judge, that the proper question of fact to be decided was whether the plaintiff had agreed to take and did take the notes of the one partner in satisfaction of the joint debt, that there was no evidence of such agreement, and the fact that plaintiff, when taking the notes, did not expressly reserve his rights against the other partner, was immaterial.

For what would constitute a good plea under the old practice, when the defence was that novation had taken place, see *Watts v. Robinson*, 32 U. C. Q. B. 362; see *Tucker v. Tucker*, 1894, 3 Ch. 429; and in *re Head*, *Head v. Head* (1893), 3 Ch. 426; do. (1894), 2 Ch. 236.

Sec. 6.—KNOWLEDGE ON THE PART OF A CREDITOR THAT TWO OF HIS PRINCIPAL DEBTORS WERE ORIGINALLY AS BETWEEN THEMSELVES, OR HAVE SUBSEQUENTLY CHANGED THEIR POSITION TO THAT OF PRINCIPAL AND SURETY WILL BIND THE CREDITOR TO RECOGNIZE SUCH RELATION.

In case one partner retire, the remaining partners covenanting to indemnify him against the debts of the partnership, so that, as between themselves, the retiring partner becomes liable merely as surety instead of as principal debtor, the creditors, if they are notified of such agreement, are bound to recognize it, and in their dealings with the remaining partners to treat the retiring partner as a surety, and to have regard to his rights as such. If, therefore, they give an extension of time without the consent of the retiring partner, he will be discharged. Until recently, there was some doubt as to the law on this point, both in England and in this country. It was contended by some that the case of *Oakeley v. Pasheller*, 4 Cl. and F. 207, settled the law as above stated, while others, including Lindley, were of opinion that the position of the creditor could not be changed without his consent, and that this was really all that *Oakeley v. Pasheller* decided. See Lindley, 6th Ed., p. 258, note the case of *Swire v. Redman* was a direct authority in favour of the latter view.

It must be confessed that Lindley's view, as might be expected, is the more logical, but the law has been finally settled the other way, in England by the case of *Rouse v. Bradford*, 1894, 2 Chy. 32, 1894, A. C. 586, and in this country by the case of *Allison v. McDonald*, 23 Ont. R. 288, 20 A. R. 695, 23 S. C. R. 635.

Lord Justice Lindley was one of the judges who decided the case of *Rouse v. Bradford*, and in his judgment, L. R. 1894, 2 Ch., pp. 58 and 59, he says "This view (i. e., that the creditor has assented to the arrangement), is, I confess, the view I should myself adopt, but it is undeniable that *Oakeley v. Pasheller* has been regarded as going a step further, and as deciding that knowledge only on the part of the creditor, of the arrangement come to between his own debtors is enough

to compel the creditor to recognize such arrangement, and to prevent him from dealing with them regardless of it.

It cannot, I think, be denied that the view there taken (i. e., in *Oakford v. European and American Steam Shipping Company*, 1 Hem. & M. 182, at p. 190) of *Oakeley v. Pasheller*, whether rightly or not, has led to decisions which now at all events have resulted in establishing the propositions above stated."

In this country the rule laid down in *Swire v. Redman*, 1 Q. B. D. 536 (i. e., that the creditor must assent as well as have knowledge of the agreement between the debtors) was adopted by the Court of Appeal for Ontario in *Birkett v. McGuire*, 7 A. R. 53, and, although that case was reversed by the Supreme Court, the decision so far as it dealt with the point under consideration was not affected, so that until the decision in *Allison v. McDonald*, 23 S. C. R. 635, the rule laid down in *Swire v. Redman* was in Ontario at least considered to be law.

In *Allison v. McDonald*, 23 Ont. R. 288, 20 A. R. 695, 23 S. C. 635, the defendant and one Allison, a brother of the plaintiff, while carrying on business as partners, gave a joint and several promissory note, and also a mortgage to secure repayment for money lent, and which was used for partnership purposes. Subsequently, the partnership was dissolved, and it was agreed between the defendant and his co-partner that the co-partner should take certain property, including the mortgaged premises, and indemnify the defendant against the partnership notes. The evidence shewed that plaintiff had knowledge of this dissolution if not of its terms. After the dissolution, the plaintiff discharged the mortgage, thereby vesting the mortgaged property solely in the defendant's co-partner. On the above state of facts, the plaintiff sought to recover upon the note without being in a position to re-convey the mortgaged lands. The case was tried before the learned Chancellor of Ontario, who based his judgment on two grounds:—

1st.—On the ground that the note and mortgage having been given for the same debt, the plaintiff could not charge the defendant with payment of the note.

2nd.—On the ground that the dissolution agreement had changed the relation between the defendant and his co-partner to one of principal and surety.

The Divisional Court, following *Swire v. Redman*, 1 Q. B. D. 536, and *Birkett v. McGuire*, 7 A. R. (Ont.) 53, held that the agreement between the co-partners at the time of the dissolution could not alter the plaintiff's rights without his consent, and that therefore the relation of principal and surety had not as against the plaintiff been created, and consequently the plaintiff was entitled to recover. They did not deal with the first ground upon which the learned Chancellor based his judgment. The Court of Appeal, MacLennan, J. A., dissenting, reversed the decision of the Divisional Court, holding that the case did not turn on the question of principal and surety, and basing their decision on the first ground taken by the Chancellor. The Supreme Court affirmed the decision of the Court of Appeal, and while the learned Chief Justice, who delivered the judgment of the Court, stated that he preferred to rest his judgment on the first ground taken by the Chancellor, he went on to say that there could be no doubt as to the second ground being also right so far as regards the law, and that "the case of *Swire v. Redman* cannot now be regarded as a binding authority, if it ever was one."

In *Pitfield v. Trotter*, 35 Can. Law Journal, 457, where one partner, with the knowledge and consent of his co-partner, gave an acceptance in the firm name in satisfaction of a private debt, it was held by the full Court in Nova Scotia that the co-partner was not entitled to be considered as a surety on a renewal given after dissolution. In this case, however, the plaintiff had no notice of the dissolution.

See also section 36, *supra*, p. 40.

SEC. 7.—EFFECT OF CHANGE IN FIRM ON GUARANTY.

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is in the absence of agreement to the contrary revoked as to future transactions by any change in the con-

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stitution of the firm to which or of the firm in respect of the transactions of which the guaranty or obligation was given. 60 Vic. (Man.), c. 24, s. 18; R. S. B. C., c. 150, s. 19; N. W. T. Ord., 1899, cap. 7, s. 20; R. S. N. S., c. 83, s. 46.

This section was substituted for section 4 of the Imp. Mercantile Law Amendment Act, 19 and 20 Vic., c. 97. In some of the Provinces there has been no such legislation, but, as 19 and 20 Vic. 97, was simply a confirmation of the Common Law, the law is the same in all the Provinces. See judgment Ritchie, C. J., in *Starrs v. Cosgrave*, 12 S. C. R. 371 at p. 580. "The Mercantile Amendment Act did not alter the English law as settled by decided cases."

Whether or not a guaranty is continuing depends upon the construction of the particular contract under which the guaranty is given, but a guarantor should be careful to limit his guaranty to one particular transaction, if he does not wish to have it construed as a continuing guaranty.

See Smith's Mercantile Law, 10th Ed., 579 et seq. And see Lindley, 6th Ed., p. 128.

By the Mercantile Law Amendment Act, R. S. O., c. 145, s. 2, 3, 4; R. S. N. S. (1884), c. 104, Order 62; R. S. B. C., 56, s. 16, sub-s. 15.

(2) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays the debt or performs the duty, shall be entitled to have assigned to him or a trustee for him every judgment, specialty or other security, which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security be or be not deemed at law to have been satisfied by the payment of the debt or the performance of the duty.

(3) Such person shall be entitled to stand in the place of the creditor, and to use all the remedies and if need be, and on proper indemnity, to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor or any co-security, co-contractor, or co-debtor as the case may be, indemnification for the advances made and loss sustained by the person who has so paid such debt or per-

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formed such day, and such payment or performance so made by such surety shall not be a defence to such action or other proceeding by him.

(4) No co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such last mentioned person is justly liable.

In *Small v. Riddell*, 31 U. C. C. P. 373, the above sections were held not to apply to partnership transactions. See also *Potts v. Leask*, 36 U. C. Q. B. 476, and *Scripture v. Gordon*, 7 Pr. R. (Ont.) 164. But in *London, Can. v. Morphy*, 14 A. R. (Ont.) 577, *Osler, J. A.*, at p. 581, says:—"I doubt if under the Mercantile Law Amendment Act, R. S. O. (1887), c. 116, ss. 2, 3 and 4, one person paying a judgment against the firm is entitled as a matter of right to enforce it for his own benefit, except it may be to the extent that anything may be proved due to him upon the taking of the accounts between them." And in *Honsinger v. Love*, 16 Ont. R. 170, it was held that the above sections applied in the case of partners.

QUEBEC LAW.

CHAPTER II.

RELATIONS OF PARTNERS TO THIRD PERSONS.

- Sec. 1. Rule as to Civil Partnerships.
- Sec. 2. Rule as to Commercial Partnerships.
- Sec. 3. Contracts on behalf of Partnership in name of one Partner.
- Sec. 4. Contracts in Partnership name.
- Sec. 5. Contracts in name of one Partner.
- Sec. 6. Dormant or unknown Partners.
- Sec. 7. Holding Out.
- Sec. 8. Additional General Rules from Title of Mandate, as to liabilities of Partners for acts of each other.

SEC. 1.—RULE AS TO CIVIL PARTNERSHIPS.

C. C. 1854. Partners are not jointly and severally liable for the debts of the partnership. They are liable to the creditor in equal shares, although the shares in the partnership may be unequal.

This article does not apply in commercial partnerships.

This article, which applies only to civil, and not to commercial partnerships, is drafted on the principle of the old French law, and on articles of the Code Napoleon. It has been held under it, that professional attorneys, who carry on a business under a firm name, are jointly and severally liable as partners for moneys collected by the firm, notwithstanding the fact that it is a civil partnership. *Ouimet v. Bergevin*, 22 L. C. J., 265.

SEC. 2.—RULE AS TO COMMERCIAL PARTNERSHIPS.

The rule as to commercial partnerships, which is laid down in C. C. 1865, already quoted (ante page 29), is that all the partners are jointly and severally liable for the obligations of the partnership. If one of the partners should die, the surviving partners may be sued and held liable for the whole debt, without the representations of the deceased partner being made parties to the suit. *Stadacona Bank v. Knight*, 1 Q. L. R., 193.

SEC. 3.—CONTRACT ON BEHALF OF PARTNERSHIP IN NAME OF ONE PARTNER.

C. C. 1855. A stipulation that the obligation is contracted for the partnership binds only the partner contracting, when he acts without the authority, express or implied, of his co-partners; unless the partnership is benefited by his act, in which case all the partners are bound.

This article is also based on the old French law and on the Code Napoleon.

The contract designated is one in which a partner, in his own name, stipulates on behalf of the partnership. In order that the latter may be bound, the partner so acting must have authority from his co-partners either express or implied, or the partnership be benefited by his act.

Ignorance of the partner's power to act could not be pleaded by the third party with whom he contracted.

In a case in which one of three partners lent money on terms that the borrower, besides paying interest, should make over one-half his profits to the partnership to which the lender belonged, the borrower failed, and his creditors sued the partners of the lender. It was held by the Privy Council that one partner had no authority from the other partners to enter into a partnership with other persons in another business so as to bind them, where they had in no way been benefited by the transaction. *Knight v. Singleton*, 13 App. Cas. 788; also ante p. 21.

On the other hand, when a partnership benefited by the acts of the partner, it was held liable even though the partner had obtained the moneys dishonestly, and the partners had no knowledge of his dishonesty. *Commercial Mutual Building Society of Montreal v. Sutherland*, M. L. R., 4 Q. B., 52.

SEC. 4.—CONTRACTS IN PARTNERSHIP NAME.

C. C. 1866. The partners may make such stipulations among themselves concerning their respective powers in the management of the partnership business as they see fit, but, with respect to third persons dealing with them in good faith, each partner has an implied power to bind the partnership for all obligations contracted in its name and in its usual course of dealing and business.

This article, as also 1867, 1868, 1869 and 1870, are based on the English and Scotch law, and apply to Commercial Partnerships only.

C. C. 1866 refers to contracts made in the *firm* name in distinction to the preceding and succeeding articles.

Under it the only restriction upon the partner's power is that the obligation should be in the "usual course of dealing and business" of the partnership. It is not necessary that the partner acting should really possess the power to do so, or that the transaction should result for the profit of the partnership, as in the case of civil partnerships, under C. C. 1855.

If, at the time of the transaction which one of the partners desires to enter into and before it may be concluded, one of the other partners object, it cannot be concluded. 4 Pothier (Bugnet) *Société*, No. 90.

Where an individual's name has been given to a business, and it is being conducted by him, whether he is a partner or not, it is sufficient to hold him out to the world as a general agent, and the firm is liable for the amount of a draft discounted by him, whatever might be the use to which he put the proceeds, unless he who gave the discount knew that they were to be misapplied. *Lewis v. Walters*, M. L. R., 4 Q. B., 256; and *Lewis v. Osborne*, M. L. R., 2 Q. B., 353.

So, too, in an action on a promissory note, the defence was that the note of which it was a renewal was given for the accommodation of the payee by the defendant's partner who had no authority to make it, and that the plaintiffs when they took it knew of its defective character, it was held that, as it did not appear that such knowledge attached when the original note came into plaintiff's possession, plaintiffs were entitled to recover. *Union Bank of Canada and Bulmer*, 10 L. N., 361.

But where the plaintiff knew that the sum lent to a partner was solely for the latter's individual benefit, although the note was that of the firm, he could not recover. *Rochette & Rochette*, 10 Q. L. R., 342.

A guaranty of a certain sum given for a third person, signed by a partner in the name of the firm, has been held valid and binding. *Martin v. Gault*, 15 L. C. J., 237.

Even damages can be recovered from the members of a partnership under a collective name, for a false arrest made at the instigation of one of them. *Cowan & Osborne*, 12 R. L., 29.

Any agreements made between the partners restricting the mandate which the law presumes between them is of no effect as against third parties. *Osborne v. Lewis*, 17 R. L., 234. An instance of an attempt to do so was an agreement between the partners that no sale of pig iron of over \$100 in value should be made without the consent of all. A contract for the sale of over \$100 made by one of the partners in the firm name, was held to be within the scope of the partnership business, and the purchaser buying in good faith was entitled to recover. *Cuvillier v. Gilbert*, 18 L. C. J., 22.

SEC. 5.—CONTRACTS IN NAME OF ONE PARTNER.

C. C. 1867. The partners are liable for obligations contracted by one of them, in his own name, only when the obligation is for objects which are in the usual course of dealing and business of the partnership, or are applied to its use.

This principle was adopted in the Province of Quebec as early as 1857, in the case of *Maguire v. Scott*, referred to below.

It applies to contracts made by partners in their own individual names, instead of the firm name. Even then the firm is bound if the objects are in the usual course of dealing and business of the partnership, or are applied to its use. Hence, it is bound if the object be in the ordinary course of dealing, even though it is not benefited; and it is also bound if it is benefited, even though the object be not in the ordinary course of dealing. Thus this article embodies the conditions and restrictions of the two preceding articles, 1855 and 1866.

A vendor who sells to one partner in his individual name and upon his own responsibility and credit, has a right to recover against the firm of which he is a member, provided that the firm has benefited by the transaction, and although the vendor was ignorant of the partnership at the time he sold the goods. In such a case, answers to interrogations, upon *faits et articles*, of the purchasing partner, to the effect that he applied the goods so purchased by him to the purposes of the firm, are not only admissible, but are conclusive evidence to bind the firm. *Q. B., Maguire & Scott, 7 L. C. R., p. 451.*

But a creditor of an insolvent cannot claim upon the partnership of which the insolvent was a member for the price of goods sold to the insolvent before his partnership, upon the ground that the partnership afterwards got the benefit of the partnership. *Simmons & Fulton, 20 L. C. J., 296.*

This article has, however, been somewhat restrictively interpreted in the following sense:—In two cases decided in 1883 (*Beique & Dumond, 12 R. L., 436*; and *Graham v. Bennett, 12 R. L., 448*), Mr. Justice Mathieu lays down the principle that in order that the partnership should be bound, the third party should both know of its existence, and

have intended to contract with it, even though the contract be in the name of one of the partners solely. No authorities are quoted in the report of either case, and the cases do not appear to have been taken to appeal.

In 1886, the Court of Review further held that where an individual partner contracts in his own name and without reference to the partnership, he does not thereby bind the partnership or any of the members thereof, except himself. *C. R. Coutu v. Guevremont*, 31 L. C. J. 188.

The cases of *Lewis & Walters* and *Lewis & Osborne* referred to under the preceding article (ante p. 59) are also of interest in this connection.

SEC. 6.—DORMANT OR UNKNOWN PARTNERS.

C. C. 1868. Dormant or unknown partners are, during the continuance of the partnership, subject to the same liabilities towards third persons as ordinary partners under a collective name.

This article is based upon the French and English law. It is the converse of the article which follows.

SEC. 7.—HOLDING OUT.

C. C. 1869. Nominal partners and persons who give reasonable cause for the belief that they are partners, although not so in fact, are liable as such to third parties dealing in good faith under that belief.

The above article thus succinctly defines the law of the Province of Quebec on the doctrine of "holding out."

An ostensible partnership with respect to third persons may exist between traders, without there being an actual partnership between the partners, entitling the one to claim from the other contribution to the partnership debts. Consequently, in such a case of ostensible partnership a release given by creditors to the ostensible and not actual partner does not enure to the benefit of the real partner. *McIndoe v. Pinkerton*, M. L. R., 4 S. C., 101.

Cases in which the facts disclosed that the parties had given reasonable cause for the belief that they were partners are *Leblanc & Akerman*, 1 R. de J., 425; *Banque du Peuple & Gauthier*, C. R., R. J., 14 S. C., 18.

A case in which the facts did not disclose that the party had

given such cause is that of *Lesperance v. Bourassa*, decided by the Court of Queen's Bench, Montreal, 28th October, 1899, and not yet reported.

"Holding out" can be proved by parole evidence. Q. B., *Davie v. Sylvestre*, 33 L. C. J., 321.

SEC. 8.—ADDITIONAL GENERAL RULES FROM THE TITLE OF MANDATE, AS TO LIABILITIES OF THE PARTNERS FOR THE ACTS OF EACH OTHER.

In addition, article 1856 of the Code provides that liabilities of the partners for the acts of each other when not regulated by the foregoing are subject to the rules contained in the title of mandate. The principal of these articles are given here without comment.

C. C. 1727. The mandator is bound in favor of third persons for all the acts of his mandatary, done in execution and within the powers of the mandate, except in the case provided for in Art. 1738 of this title, and the cases wherein by agreement or the usage of trade the latter alone is bound.

The mandator is also answerable for acts which exceed such power, if he had ratified them either expressly or tacitly.

C. C. 1728. The mandator or his legal representative is bound towards third persons for all acts of the mandatary, done in execution and within the powers of the mandate after it has been extinguished, if its extinction be not known to such third persons.

C. C. 1729. The mandator or his legal representative is bound for all acts of the mandatary done in execution and within the powers of the mandate after it has been extinguished, when such acts are a necessary consequence of a business already begun.

He is also bound for acts of the mandatary done after the extinction of the mandate by death or cessation of authority in the mandator, for the completion of a business, where loss or injury might have been caused by delay.

C. C. 1730. The mandator is liable to third parties who in good faith contract with a person not his mandatary, under the belief that he is so, when the mandator has given reasonable cause for such belief.

C. C. 1731. He is liable for damages caused by the fault of the mandatary, according to the rules declared in article 1054.

C. C. 1054. He (every person) is responsible not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

This Chapter will be sub-divided as follows:—

Sec. 1.—Variation by consent of terms of partnership.

Sec. 2.—Partnership property.

(a) Rules for determining what constitutes partnership property.

(b) Rules regulating the rights of partners in such property.

Sec. 3.—As to expulsion, and determining rights of partners in partnership at will and rights when term has expired and the partnership is continued without a new agreement.

Sec. 4.—Duty of partners to account.

Sec. 5.—Effect of assignment of share and rights of assignor.

SEC. 1.—VARIATION BY CONSENT OF TERMS OF PARTNERSHIP.

19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing. 60 Vic. (Man.), c. 24, s. 19; R. S. B. C., c. 150, s. 20; N.W.T. Ord., 1899, c. 7, s. 21.

For usual clauses in partnership articles, see appendix.

SEC. 2.—PARTNERSHIP PROPERTY.

(a) Sections 20, 21, and 22 contain the following rules for determining what shall be deemed partnership property:—

20. (1) All property and rights and interest in property originally brought into the partnership stock, or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business,

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are called in the Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust so far as necessary for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land not being itself partnership property are partners as to profits made by the use of that land, and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them in the absence of an agreement to the contrary, not as partners but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase. 60 Vic. (Man.), c. 24, s. 20; R. S. B. C., c. 150, s. 21; N. W. T. Ord., 1899, c. 7, s. 22.

For cases illustrating this sub-section, see Lindley, 6th ed., 340.

The ultimate test, however, must be the agreement of the parties, Lindley, 6th Ed., p. 332.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm. 60 Vic. (Man.), c. 24, s. 21; R. S. B. C., c. 150, s. 22; N. W. T. Ord., 1899, c. 7, s. 23.

22. "Where land or any interest therein has become partnership property, it shall, unless the contrary intention appear, be treated as between the partners (including the representatives of a deceased partner) and also as between the heirs of a deceased partner and his executors or administrators, as personal or moveable, and not real estate." 60 Vic. (Man.), c. 24, s. 22; R. S. B. C., c. 150, s. 23; N. W. T. Ord., 1899, c. 7, s. 24.

The Brit. Col. Act reads in the first line, "where land or any heritable interest therein," and the last line, "and not real or heritable estate."

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At Common Law, while the decisions are conflicting, there is an almost overwhelming preponderance of authority in favor of the rule as here laid down, and it may safely be said to be the rule in all the Provinces, and not only in those in which the Act is in force.

See Lindley, 6th Ed., pp. 352, et seq.

Wylie v. Wylie, 4 Grant, 278.

Sanborn v. Sanborn, 11 Grant, 359.

Manitoba Mortgage Company v. Bank of Montreal, 17 S. C. R., 692.

As partnership lands are really personalty, dower does not attach.

See in re Music Hall Block, 8 Ont. R. 225.

An agreement to assign a share in a partnership, part of the assets of which consist of land, is within sec. 4 of the Statute of Frauds, Gray v. Smith, 43 Ch. D., 208.

But a partnership may be formed by parol agreement, notwithstanding it is to deal in land. Archibald v. McNerhanie, 29 S. C. R., 564.

It is competent for the partners to agree that land shall not be treated as personalty, and an agreement expressed or implied that the land shall not be sold would seem to amount to an agreement not to treat it as personalty, because the doctrine that partnership lands are to be treated as personalty rests on the equitable doctrine of conversion. In other words each partner has the right on a dissolution to have the land sold and turned into money, so that equity treats it as personalty or money, but if there were an agreement that it should not be sold, this would amount to an agreement not to treat it as personalty.

Where a contract is made by one partner for the sale of partnership lands, to which the other partner refuses to consent, the purchaser cannot insist upon taking the share of the contracting partner in the lands with a proportionate abatement in the price. Crain v. Rapple, 20 A. R. 291.

Right to vote on Partnership Property.

When two partners occupied premises, the freehold of which was vested in one of them, and the assessment of the premises

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was sufficient to give a qualification to each, both parties were held qualified to vote. *South Grenville Election. Ellis v. Fraser*, H. E. C. 163; and see *Queen v. Joannis*, 28 O. R. 495; *Regina v. Bennett*, 27 O. R. 314.

Charging order:—

23.(1) The Court of Queen's Bench or a judge thereof may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits, with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order, appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and enquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(2) The other partner or partners shall be at liberty at any time to redeem the interest, or in case of a sale being directed to purchase the same.

The corresponding section of the Brit. Col. Act, sec. 24, provides that:—

24. (1) After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2) The Supreme Court or a judge thereof, or a judge of a County Court, within his territorial jurisdiction, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits, with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of the profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and enquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favor of

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the judgment creditor by the partner, or which the circumstances of the case might require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4) This section shall apply in the case of a cost book company, as if the company were a partnership within the meaning of this Act, and see N. W. T. Ord., c. 7, s. 25.

These provisions apply to British Columbia, Manitoba and North-West Territories. The other provinces have no provisions as to charging orders.

(b) Rules for determining rights of Partners in Partnership Property.

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined subject to any agreement, express or implied, between the partners by the following rules:—

(1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

(2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him.

(a) In his ordinary and proper conduct of the firm, or

(b) In or about anything necessarily done for the preservation of the business or property of the firm.

(3) A partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.

(4) A partner is not entitled before the ascertainment of profits to interest on the capital subscribed by him.

(5) Every partner may take part in the management of the partnership business.

(6) No partner shall be entitled to remuneration for acting in the partnership business.

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(7) No person may be introduced as a partner without the consent of all existing partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9) The partnership books are to be kept at the place of business of the partnership (or the principal place if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them. 60 Vic. (Man.), c. 24, s. 24; R. S. B. C., c. 150, s. 25; N. W. T. Ord., 1899, c. 7, s. 26.

Sub-sec 1.—“*All the Partners are entitled to share equally, etc.*”

Although the partners may have contributed the capital unequally, they will, in the absence of any agreement to the contrary, share profits and losses, whether of capital or otherwise, equally. Lindley, Act 62; *Stewart v. Forbes*, 1 Mac. & G. 137; *Webster v. Bray*, 7 Ha. 159; *Robinson v. Anderson*, 20 Beav. 98; *Peacock v. Peacock*, 16 Ves. 49.

If it has been agreed that profits shall be divided in a certain proportion, the inference in the absence of an agreement to the contrary is that losses are to be shared in the same proportion, Lindley, Act 62, referring to judgment of Jessel, M. R., in *Albion Life Ass. Society*, 16 Ch. D. p. 87. *Storm v. Cumberland*, 18 Gr. 245.

Sub-sec. 3.—“*Partners making advance entitled to Interest.*”

It has been suggested that at Common Law there was some doubt as to this rule, and the cases of *DeHertel v. Supple*, 14 Gr. 421, and *Cooke v Benbow*, 3 DeG. J. & S. 1, have been referred to as deciding that interest will not be allowed, but *De Hertel v. Supple* was not a partnership case, and *Cook v. Benbow* only decided that advances on account of capital should not bear interest, while in *Ex-parte Chippendale*, 4 De G. M. & G. 19, though the judges acknowledged that they felt some difficulty on the point, yet they expressly decided that

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partners making such advances were entitled to interest, and Lindley, see Act, p. 65, says that the sub-sec. is in accordance with the previous law.

But a partner indebted to the firm in respect of money borrowed, or in respect of a balance in his hands, is not liable for interest unless there has been a fraudulent retention or an improper application of the money. Lindléy, Act 65; Rhodes v. Rhodes, Johns 653, there cited. In the Provinces in which the Act is not in force (as also in the North-West Territories where the Act does not mention the rate), probably the rate of interest would be six per cent. instead of five.

Sub-sec. 5.—*“Every Partner may take part in the management.”*

This does not apply to the special partners of the Canadian Acts. A special partner by taking part in the management of the business would render himself liable as a general partner. See Limited Partnerships.

Sub-sec. 6.—*Remuneration.*

It was held in *Butler v. Butler*, 29 N. S. R. 145, that in the absence of special agreement a partner is not entitled to be paid for personal services in winding up the business. And see *Liggett v. Hamilton*, 24 S. C. R. 665.

SEC. 3.—AS TO EXPULSION AND DETERMINING PARTNERSHIP
AT WILL.

Partner cannot be expelled by majority.

25. No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners. 60 Vic. (Man.), c. 24, s. 25; R. S. B. C., c. 150, s. 26; N. W. Ord., 1899, c. 7, s. 27.

Right to determine partnership at will.

26. (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time, on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted

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by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose. 60 Vic. (Man.), c. 24, s. 26; R. S. B. C., c. 150, s. 27; N. W. T. Ord., 1899, c. 7, s. 28.

Perhaps where the Act is not in force a partnership constituted by deed must be dissolved by deed. See Lindley, 6th Ed., 560, and Doe. D. Waithman v. Miles, 4 Camp. 373.

27. (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners, or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership. 60 Vic. (Man.), c. 24, s. 27; R. S. B. C., c. 150, s. 28; N. W. T. Ord., 1899, c. 7, s. 29.

SEC. 4.—DUTY OF PARTNERS TO ACCOUNT.

This is dealt with in sections 28, 29 and 30. These sections are founded on the "broad principle of equity that from every person standing in a situation of trust and confidence with respect to another a conduct marked with the most scrupulous good faith shall be required."

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. 60 Vic. (Man.), c. 24, s. 28; R. S. B. C., c. 150, s. 29; N. W. T. Ord., 1899, c. 7, s. 30.

Partner must account for private profit.

29. (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner,

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and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. 60 Vic. (Man.), c. 24, s. 29; R. S. B. C., c. 150, s. 30; N. W. T. Ord., 1899, c. 7, s. 31.

In *Mitchell v. Lister*, 21 Ont. 318, where after notice of dissolution one of the partners had taken orders on his own account to be filled by him after the termination of the partnership, it was held following *Dean v. McDowell*, 8 Ch. D. 365, that his co-partner had no equity to compel him to account for the profits of the business thus done. The proper remedy is by injunction or an action for damages.

Partner carrying on business of same nature must account.

30. If a partner without the consent of the other partners carries on any business of the same nature as, and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business. 60 Vic. (Man.), c. 24, s. 30; R. S. B. C., c. 150, s. 31; N. W. T. Ord., 1899, c. 7, s. 32. See *Mitchell v. Lister*, supra.

SEC. 5.—EFFECT OF ASSIGNMENT OF SHARE AND RIGHTS OF ASSIGNEE.

Does the assignment of his share by one partner operate as a dissolution of the partnership? In this connection it is necessary to consider section 31, which deals with the assignment of a share in a partnership, and which provides as follows:—

31. (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not as against the other partners entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the accounts and profits agreed to by the partners.

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(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and for the purpose of ascertaining that share to an account as from the date of the dissolution, 60 Vic. (Man.), c. 24, s. 31; R. S. B. C., c. 150, s. 32; N. W. T. Ord., 1899, c. 7, s. 33.

The question as to whether an assignment by one partner of his share in the partnership operates as a dissolution cannot be said to have been decided in England. The better opinion seems to be that before the Act it would have so operated in the case of a partnership at will, and in other cases would give the co-partners the right at their option to dissolve. Since the Act, however, it seems doubtful whether such an assignment would in any case operate as a dissolution. It might be inferred from the silence of sections 32 and 33 that it does not so operate, though, on the other hand, it might be argued that, by virtue of section 45, which provides that the rules of Equity and Common Law shall continue in force, except so far as they are inconsistent with the express provisions of the Act, no change in the law has been made. See Lindley, 6th Ed., 575-7, and Act 77.

In America, an assignment of his share by one partner operates as a dissolution not only in the case of a partnership at will but also in the case of a partnership for a fixed period at the instance of the assignor or assignee, and against the will of the other partners. In Ontario the American rule was adopted in the case of *Westbrook v. Wheeler*, 25 Ont. 559.

The position of the law in the various Provinces may be stated as follows:—

If it be correct that the Act introduced a change in the law as above set out, then in Manitoba, British Columbia and North-West Territories an assignment by one partner of his share will not in any case operate as a dissolution. In Ontario, under *Westbrook v. Wheeler*, *supra*, such an assignment will in every case operate as a dissolution, and in the other Pro-

vinces it will, according as the American or English rule is followed, either in every case operate as a dissolution, or will, in the case of a partnership at will, operate as a dissolution, and in other cases give the remaining partners the right at their option to dissolve.

QUEBEC LAW.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

Sec. 1.—Contributions to Partnership Capital.

(a) In Full Property.

(b) In Usufruct Only.

Sec. 2.—Private Business carried on by Partner.

Sec. 3.—Imputation of Payments received by Partners and Partnership.

Sec. 4.—Damages caused by Fault of Partner.

Sec. 5.—Reimbursement and Indemnification of Partner by Partnership.

Sec. 6.—Profits and Losses.

Sec. 7.—Management of the Business of the Partnership.

(a) By agreement.

(b) Without Agreement.

Sec. 8.—Third Parties associated in Share of Partner.

The Chapter of the Civil Code dealing with the obligations and rights of partners among themselves contains fifteen articles drawn for the greater part from the Roman Law. They generally coincide with the Code Napoleon.

SEC. I.—CONTRIBUTIONS TO PARTNERSHIP CAPITAL.

(a) *In Full Property.*

C. C. 1839. Each partner is a debtor to the partnership for all that he has agreed to contribute to it.

When such a contribution consists of a certain thing, and the partnership is evicted of it the partner is subject to warranty in the same manner as a seller is in favor of the buyer.

Each partner ought to contribute something, although not necessarily of the same value or nature.

C. C. 1830 (ante p. 18) enumerates property, credit, skill or industry. The word "property" comprises even incorporeal things, such as a secret process, a patent, a trade mark, or good will. (Beaudry-Lacantinerie, Société, No. 158.) The contribution of a public office is, however, illegal. (Id. 159.)

Each partner is a debtor to the partnership, on the principle (ante p. 18) that the latter constitutes a moral entity. The partner and partnership practically occupy the positions of seller and buyer. Hence the partnership becomes the owner by the consent alone of the parties, and the thing is at once at its risk, provided it does not perish by the fault of the partner, and provided the thing perish before the partner is in default to transfer it. (Pothier, Société, No. 110.) The other rules of sale likewise apply to the contract. (Beaudry-Lacantinerie, Société, No. 165.)

The following case, which went to the Privy Council, is of interest:—

MacLean, Stewart and Smith had entered into partnership under the name of John MacLean & Co., in continuation of a former partnership under the following conditions:—Each of the partners was to contribute to the new partnership to form its capital the amounts which were credited to their account in the books of the former partnership. These sums were \$4,480.91 for MacLean, \$25,292.47 for Stewart, and \$30,350.96 for Smith, thus forming a partnership capital of \$60,124.34. The partners were to share in the profits and losses: MacLean for one-half, and Stewart and Smith for one-quarter each. Some years after this agreement, the partnership of John MacLean & Co. became insolvent, and it was proved that the partnership capital had been completely lost in the operations of the partnership. During these operations MacLean had withdrawn from the partnership the portion of the capital which he had contributed to it himself, plus the sum of \$29,079.31, charged to the knowledge of MacLean to the capital account in the books of the partnership. After the assignment, MacLean purchased from the creditors all the assets of the partnership for fifty cents on the dollar, which was the true value of these assets, and a discharge was given by the creditors to the three partners.

The following was held by the Court of Queen's Bench, confirming the judgment of Jette, J., R. J., 4 S. C. 36.

1. That, under the circumstances, the partnership capital having been completely lost, each of the partners had to bear this loss in the proportions indicated by the partnership articles; and that MacLean, having only contributed to this capital a portion of his share in the loss, and Stewart and Smith respectively more than the amount which they ought to bear in the loss of the capital, MacLean ought to reimburse his partners the amount which the latter had contributed to the partnership capital, over and above the proportion which they ought to bear in the loss of this capital;

2. That MacLean, having only paid to the creditors the real value of the assets of the partnership, he could not set up in compensation against his co-partners any part of the sum paid by him in consideration of the reconveyance to him of the assets, and this in spite of the discharge granted to his partners;

3. That the claim in question constituted rather a debt of the partners than a debt of the partnership; and, in consequence, MacLean, the debtor of this claim, and creditor, as the result of the reconveyance of the assets to him, of all the debts of the partnership, had not extinguished this claim by the confusion in his person of the qualities of debtor of this claim and creditor of the debts of the partnership;

4. That, in principle, the assignment of a commercial partnership includes the property and actions of the partners individually, and even the recourse which they can exercise among themselves, but when, after the assignment, as in this instance there has been a composition by the partnership and a discharge in the name of the creditors, this discharge has the effect of giving back to the partners the exercise of their personal rights, and hence the rights which they can exercise against their co-partners. MacLean & Stewart, R. J., 3 B. R. 434.

These decisions were reversed by the Supreme Court, Sir Henry Strong, C.J. and Mr. Justice Taschereau dissenting (25 S. C. R., 225); but were again restored by an unanimous

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judgment of the Privy Council on the 1st of August, 1896. The latter judgment is not reported. It is simply formal and contains no reasons.

The judgment in *Reid v. Bisset*, 15 Q. L. R., 108, was approved by the foregoing decision.

C. C. 1840. A partner who fails to pay any sum of money which he has agreed to contribute to the partnership is liable for interest on such sum from the day of his default.

He is also liable for interest upon any sum taken by him from the partnership funds for his particular benefit from the day that he has withdrawn it.

This article contains an exception to the general rule in that such interest is due from the day of the partner's default to pay the sum to be contributed, or from the day on which he has withdrawn the partnership funds, instead of being due only from the date of the demand. The action to recover such interest is prescribed by five years (C. C. 2250). The partner cannot object to pay it on the ground that the partnership has not suffered. (Fuzier-Herman, C. C. 1846-7.)

C. C. 1841. The provisions contained in the last two preceding articles are without prejudice to the rights of the other partners to damages against the partner in default, and to obtain a dissolution of the partnership, according to the rules contained in the title "Of Obligations," and in article 1896.

This article was adopted by the codifiers to remove all doubt as to the extent of the responsibility of a partner under the conditions mentioned.

The rules referred to in the title "Of Obligations" are C. C. 1070 to 1078. Article 1896 is to be found later. See also C. C., 1845 (post p. 79).

The Corporation of the County of Ottawa, under the authority of a by-law, undertook to deliver to the Montreal, Ottawa and Occidental Railway Company, for stock subscribed by them, a certain number of debentures bearing interest. On the refusal of the County, without valid reasons, to deliver the debentures, the Supreme Court held that the relationship between the parties constituted a partnership, and that the

County was liable under these articles for interest on the bonds, in addition to damages. Corp. of Co. of Ottawa, and M. O. & O. R. Co., 14 S. C. R. 193.

(b) *In Usufruct only.*

C. C. 1846. A certain and determinate thing, which does not consumed by use, and of which the enjoyment only is contributed to the partnership, is at the risk of the partner who is the owner of it.

Things which consume by use or deteriorate by keeping, or which are intended to be sold, or are contributed to the partnership at a fixed valuation, are at the risk of the partnership.

By way of exception to the general rule laid down in the first paragraph of the article, the partnership becomes proprietor of the things of which the enjoyment alone has been contributed in the different cases mentioned in the second paragraph. It is therefore evident that the partner who has contributed things which deteriorate in keeping, cannot, on the expiry of the partnership, be compelled to take back the same identical things. (Fuzier-Herman, C. C., 1851-1.) Neither can he demand that they be returned to him. He can only demand the value of the things, and this value should be that which the thing possessed, when contributed. (Id. 2 and 3.)

SEC. 2.—PRIVATE BUSINESS CARRIED ON BY A PARTNER.

C. C. 1842. A partner cannot carry on privately any business or adventure which deprives the partnership of a portion of the skill, industry or capital which he is bound to employ therein. If he does so, he is obliged to account to the partnership for the profits of such business.

The portion of skill, industry or capital which he is bound to employ will, of course, depend on the contract. If, by the partnership articles, each partner is free to undertake work for his sole benefit, outside the business of the partnership, he need not account to the partnership for the profits of such work. *Berger v. Metivier*, 1 Q. B. R., 327.

This article refers solely to the relations of the partners among themselves and not to their liability to third parties. *C. R., Coutu v. Guevremont*, 31 L. C. J., 188.

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SEC. 3.—IMPUTATION OF PAYMENTS RECEIVED BY PARTNERS AND PARTNERSHIP.

C. C. 1843. When a partner is creditor individually of a person who is also indebted to the partnership, and both debts are actually payable, the imputation of any payment received by him from the debtor is made upon both debts in proportion to their respective amounts, although by the receipt he may have imputed it upon his private debt only; but if by the receipt he impute the payment wholly upon the partnership debt, such imputation is to be maintained.

This article expresses both the law of Quebec and of France to-day, but differs from the English law in that, by the latter, the payment would be imputed on the private debt in the absence of a special imputation on the debts of the partnership.

It is a disputed point as to whether, if the imputation of payment has been made by the debtor himself, the partnership should, save in case of fraud, stand the consequences, even if they are prejudicial to it and advantageous for the partner. The greater number of authorities are in favor of the affirmative. (Fuzier-Herman, C. C. 1848-3.)

It has been held that an agreement by which the manager of a partnership sold certain goods belonging to the partnership, and agreed that the prices of these goods shall be applied by the purchaser in payment of the personal debt of any or all of the members of the partnership to the purchaser, is legal and binds the partnership and allows the purchaser to retain the price of these goods in payment of a personal debt, which he has against the manager, who was also a partner. It was proved in this case that all the members of the firm had acquiesced in the agreement. Q. B., Fortier & Dupuis, 18 R. L., 244.

C. C. 1844. When a partner has been paid his full share of a debt due to the partnership and the debtor becomes insolvent, such partner is obliged to return to the partnership what he has received, although he may have given a discharge specially for his part.

He has only recovered a part of the common thing and hence should return it. If the failure of the partner to recover

from the insolvent is the result of negligence of one of the partners, he can be compelled to reimburse the partnership under the following article. (Trop long, t. 2, n. 562.)

This article and the three following are taken from the Code Napoleon.

SEC. 4.—DAMAGES CAUSED BY FAULT OF PARTNER.

C. C. 1845. Each partner is liable to the partnership for damages caused by his fault. He cannot set up in compensation of such damages the profits which the partnership has derived from his industry in other affairs.

But there is no prohibition against his setting up the profits of the transaction in regard to which he is sued. (Fuzier-Herman, C. C. 1850-4.)

In a contract between several persons for the keeping of a ferry, with power to any one of them to sell or convey his right therein, the assignees of any of the said partners cannot act so as to injure the business. The other co-partners have a personal and direct action against such assignees, as well for the damages from their breach of the original contract, as for the rescission of the contract for the future. Q. B., Laviolette & Delisle, 8 L. C. R. 174; see also Cowan v. Osborne (ante p. 59).

SEC. 5.—REIMBURSEMENT AND INDEMNIFICATION OF PARTNER BY PARTNERSHIP.

C. C. 1847. A partner has a right against the partnership, not only to recover money disbursed by him for it, but also to be indemnified for obligations contracted by him in good faith in the business of the partnership, and for the risks inseparable from his management.

If such risks could have been avoided by prudence on his part, he cannot recover. (Pothier, Société, No. 129.)

On a judgment rendered jointly and severally against two partners for a debt personal to one of them, the payment made by the personal debtor frees his partner, and he who has paid may then cause himself to be subrogated in the rights of the plaintiff, but should, if he has any claim against his part-

ner, proceed directly by an action to account (*pro socio*). *Leduc v. Turcot*, 5 L. C. J., 96. For the action to account, see later.

SEC. 6.—PROFITS AND LOSSES.

C. C. 1848. When there is no agreement concerning the shares of the partners in the profits and losses of the partnership, they share equally.

This article expresses a rule of Roman Law, which, in the absence of stipulation, always presumes equality of shares. It is in accordance with English, Scotch and United States law. A great diversity of opinion on the subject exists in France, however. The Code Napoleon declares the shares to be in proportion to the contributions.

SEC. 7.—MANAGEMENT OF THE BUSINESS OF THE PARTNERSHIP.

(a) *By Agreement.*

The following article, C. C. 1849, commences a series of articles devoted to the management of partnerships. Their sole object is to supplement the will of the interested parties. Hence the following rules are only applicable in the cases and so far as the agreement of partnership is silent.

C. C. 1849. A partner charged with the management of the business of the partnership, by special clause in the contract, may perform all acts connected with his management, notwithstanding the opposition of the other partners, provided he act without fraud.

Such power of management cannot be revoked without sufficient cause while the partnership continues, but if the power be given by an instrument posterior to the contract of partnership, it is revocable in the same manner as a simple mandate.

It is difficult to lay down any general rule as to the extent of the power of management, particularly in a work of this character.

C. C. 1850. When several of the partners are charged with the management of the business of the partnership generally,

and without a provision that one of them shall not act without the others, each of them may act separately; but if there be such a provision, one of them cannot act in the absence of the other, although it be impossible for the latter to join in the act.

It is to be noted that this article applies to the relations between the parties solely, and does not in any way affect the rights of third parties under C. C. 1867, already considered. (Ante p. 60).

(b) *Without Agreement.*

C. C. 1851. If there be no special stipulation as to the management of the business of the partnership, the following rules apply:—

1. The partners are presumed to have mutually given to each other a mandate for the management, and whatever is done by one of them binds the other; saving the right of the latter, together or separately, to object to any act before it is concluded;

2. Each partner may use the things belonging to the partnership, provided he apply them to their customary and destined use, and that he do not use them against the interests of the partnership, or in a manner to prevent his co-partners from making use of them according to their right;

3. Each partner may compel his co-partners to bear with him the expenses which are necessary for the preservation of the property of the partnership;

4. One of the partners cannot make alterations in the immoveable property of the partnership, without the consent of the others, although he should establish that such alterations are advantageous.

This article lays down rules drawn from the Roman Law, and in accordance with the present law of France. In England and in the United States, in the event of a disagreement as to the administration, the opinion of the majority prevails; and it is doubtful whether one of the partners, or even several members of the minority can object to it. The codifiers considered that the rule as expressed in the above article appeared just and reasonable, and should be observed. By it, it will be noticed, one partner alone can object to any act before it is concluded.

Some French authors, it is true, contend that the majority can govern, notwithstanding the article. Others consider there is no foundation for such an opinion. (Beaudry-Lacantinerie, Société, No. 318.)

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C. C. 1852. A partner who has no right of management cannot alienate or otherwise dispose of anything which belongs to the partnership; saving the rights of third persons as hereinafter declared.

The rights of third persons are discussed in this work at pages 57 and following.

SEC. 8.—THIRD PARTIES ASSOCIATED IN SHARE OF PARTNER.

C. C. 1853. Each partner may, without the consent of his co-partners, associate with himself a third person in the share he has in the partnership. He cannot without such consent associate him in the partnership.

This consent can be tacit. (Guillouard, No. 254.) Even silence or inaction on the part of other members of the firm would not be an implied sanction of the promise signed by one partner in the name of the firm to take a stranger into the firm, although such sanction might be inferred from circumstances. (Higginson and Lyman, 4 L. C. J., 329.) See *Singleton v. Knight*, referred to under article 1855 (ante p. 58).

See also de Martigny and Laviolette, R. J., 3 C. S., 115, in which special circumstances are considered.

CHAPTER IV.

DISSOLUTION OF PARTNERSHIP.

Sec. 1.—When partnership dissolved by happening of certain events.

Sec. 2.—When Court will order dissolution.

Sec. 3.—Time from which dissolution dates.

Sec. 4.—Where partnership induced by fraud.

Sec. 5.—Position of partners after dissolution.

(a) Business carried on with deceased or retired partners' capital without settlement.

Sec. 6.—Lien of partners on dissolution.

Sec. 7.—Goodwill sold on dissolution.

Sec. 8.—Return of premium on dissolution.

Sec. 9.—Rules for settling accounts on dissolution.

SEC. I.—WHEN PARTNERSHIP DISSOLVED BY HAPPENING OF CERTAIN EVENTS.

32. Subject to any agreement between the partners a partnership is dissolved.

(a) If entered into for a fixed term, by the expiration of that term.

(b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking.

(c) If entered into for an undefined time by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or if no date is so mentioned, as from the date of the communication of the notice. 60 Vic. (Man.), c. 24, s. 32; R. S. B. C., c. 150, s. 33; N. W. T. Ord., 1899, c. 7, s. 34.

Death or Bankruptcy.

33. (1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt. 60 Vic. (Man.), c. 24, s. 33; R. S. B. C., c. 150, s. 34; N. W. T. Ord., 1899, c. 7, s. 35.

Sub-section 2 is of course in force only in British Columbia, Manitoba and North-West Territories.

Business becoming Unlawful.

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the members of the firm to carry it on in partnership. 60 Vic. (Man.), c. 24, s. 34; R. S. B. C., c. 150, s. 35; N. W. T. Ord., 1899, c. 7, s. 36.

If a partnership exists between two persons residing and carrying on trade in different countries, and war is declared between those countries, this will dissolve the partnership. Lindley, Act 85. If an Act were passed making it illegal to sell liquor, it would operate as a dissolution of partnership formed for that purpose. In the one case it would be unlawful for the members to carry it on, and in the other it would be unlawful to carry on the business at all.

SEC. 2.—WHEN COURT WILL ORDER DISSOLUTION.

35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases:

(a) When a partner is found lunatic by inquisition, or is shown to the satisfaction of the Court to be of permanently unsound mind in either of which cases the application may be made as well on behalf of the partner by his committee or next friend, or person having title to intervene, as by any other partner.

(b) When a partner other than the partner suing becomes in any other way permanently incapable of performing his part of the partnership contract.

(c) When a partner other than the partner suing has been guilty of such conduct as in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business.

(d) When a partner other than the partner suing wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him.

(e) When the business of the partnership can only be carried on at a loss.

(f) Whenever in any case circumstances have arisen which in the opinion of the Court, render it just and equitable that the partnership be dissolved. 60 Vic. (Man.), c. 24, s. 35; R. S. B. C., c. 150, s. 36; N. W. T. Ord., 1899, c. 7, s. 37.

Clause (c) perhaps goes beyond the Common Law. The cases at Common Law cannot be said to establish more than that the partnership may be dissolved when one of the partners has rendered himself liable to a criminal prosecution. See Lindley, Act 91. Except, therefore, in Manitoba, British Columbia and North-West Territories, it would not be safe to say that the Court will dissolve merely on the ground immoral conduct, if such conduct will not render the guilty partner liable to a criminal prosecution.

Clause (f) gives more extensive powers of dissolution than are possessed by the Court apart from the Act, so that in the Provinces other than Manitoba, British Columbia and North-West Territories it is presumed the Court will be confined to the cases specified in other sub-sections.

SEC. 3.—TIME FROM WHICH DISSOLUTION DATES.

When the order of the Court is necessary for dissolution, it will, in the absence of special reasons, date from the judgment. When it is necessary to bring an action to enforce the dissolution of a partnership at will, the Court may order that the dissolution date from the Writ. When the partnership may be dissolved by notice, the dissolution will date from the time the notice was given.

SEC. 4.—DISSOLUTION WHERE PERSON INDUCED BY FRAUD
TO ENTER PARTNERSHIP.

If a person has been induced by the fraud of his co-partners to become a partner in the concern, he may at his option have the contract set aside. But if the fraud be that of a third person the Court will not rescind the contract *Morrison v. Earls*, 4 Can. L. T. 189. When a partnership contract is so rescinded on the ground of fraud or misrepresentation, the party at whose instance it is rescinded is entitled to a lien on the partnership assets after satisfying the liabilities of the partnership for any premium paid by him, or sum contributed as capital, and to stand in the place of the creditors for any payments made by him in respect of partnership liabilities, and to be indemnified by the persons guilty of the fraud or misrepresentation against all the debts and liabilities of the firm.

See sec. 41, 60 Vic. (Man.), c. 24, s. 41; R. S. B. C., c. 150, s. 42; N. W. T. Ord., 1899, c. 7, s. 43.

Davidson v Thirkell, 3 Gr. 330.

Merchants Bank v. Thompson, 3 Ont. 541.

Partners may be compelled to give public notice of dissolution.

37. On the dissolution of a partnership, or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence. See sec. 37 of Act, and *Lindley (Act)* 99, and 60 Vic. (Man.), c. 24, s. 37; R. S. B. C., c. 150, s. 38; N. W. T. Ord., 1899, c. 7, s. 39.

SEC. 5.—POSITION OF PARTNERS AFTER DISSOLUTION.

Before the Act there was some doubt under the English decisions as to how far the acts of one partner will bind the others after dissolution, and consequently in those Provinces in which the Act is not in force the question cannot be said to be settled. No doubt, however, the Courts would follow the rule laid down in section 38 of the Act, though in *Murphy v. Yeomans*, 29 U. C. C. P. 421, referred to below, the Court

shewed a disposition to adopt the wider rule that, after dissolution, the rights and obligations of the partners continue the same till the partnership is wound up.

The rule always contended for by Lindley, and which was eventually adopted in the Act is expressed in section 38 as follows:—

38. "After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

"Provided that the firm is in no case bound by the acts of a partner who has become bankrupt, but this proviso does not affect the liability of any person who has, after the bankruptcy, represented himself, or knowingly suffered himself to be represented as a partner of the bankrupt." 60 Vic. (Man.), c. 24, s. 38; R. S. B. C., c. 150, s. 39; N. W. T. Ord., 1899, c. 7, s. 40.

The question was considered in our own Courts in *Hammond v. Heward*, No. (1) 20 U. C. Q. B., 36; (2) 11 U. C. C. P. 26.

The defendants, Heward and Grier, were in partnership as brokers. Before the firm was dissolved, the plaintiff gave two notes to the defendant Grier for the purpose of getting the firm to negotiate them. They were endorsed in the firm name before dissolution, but were discounted by the defendant Grier after dissolution, and the proceeds were applied by him to his own use. Plaintiff was obliged to pay the notes, and brought his action against Heward and Grier. The question at issue was whether Heward was liable. There were two trials. On the first the trial judge allowed an amendment and the jury found in favour of the plaintiff. The verdict was, however, set aside by the Court of Queen's Bench on the ground that the amendment should not have been allowed. McLean, J., in his judgment, stated that, "There could be no duty resting on the defendants jointly after their dissolution of co-partner-

ship in reference to anything thereafter to be done in matters connected with their former business, and no responsibility could devolve upon Heward for any improper act of Grier in negotiating the notes after that period."

This statement of the law, it is submitted, is not correct, and it cannot be reconciled with the ground of decision in the second action. In the second action the jury also found for the plaintiff, and upon an application for a new trial it was held that a duty arose to get the notes discounted, and to pay the proceeds to the plaintiff, or to return the notes to him. The judgment might have been put on the ground, and though not expressly so stated it is submitted that it was put on the ground that, "Each partner had the power after dissolution to bind the firm so far as necessary to complete transactions begun but not finished at the time of dissolution."

In *Murphy v. Yeomans*, 29 U. C. C. P. 421, two partners dissolved the partnership by agreement, one of them continuing the business. Subsequently, the other partner, on the ground that he was a minor, and was not bound by the agreement for dissolution, filed a bill for an account. Subsequent to the filing of the bill, the partner continuing the business, in order to meet existing demands against the firm, sold some wheat, which was an asset of the partnership. The purchaser knew of the dissolution but did not know of the bill having been filed. It was held by Gwynne J., following *Butchart v. Dresser*, 4 De G. M. & G., 542, that the sale was valid.

When a firm has employed a solicitor to conduct litigation, and one of the partners retires while the litigation is pending, he will be liable to the solicitor for costs incurred subsequent to his retirement, even though a dormant partner. *Court v. Berlin*, 1897, 2 Q. B. 396.

(a) *Rights of retired partner when business continued after dissolution without any settlement.*

42. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm

and the outgoing partner or his estate, then in the absence of any agreement to the contrary the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets or to interest (at the legal rate) on the amount of his share of the partnership assets.

Provided that when by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits, but if any partner assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section. 60 Vic. (Man.), c. 24, s. 42; R. S. B. C., c. 150, s. 43; N. W. T. Ord., 1899, c. 7, s. 44.

In determining the proportion of profits to which a partner or his estate is entitled, each case must depend on its own circumstances "The proportion in which profits were divided before the dissolution appears to have little or nothing to do with it." Lindley, Act 109.

If the executors of the deceased partner, not being members of the firm, lend their testator's share in the assets to the continuing partners at interest, the continuing partners will only be liable for interest and not for profits, though they know that the loan is unauthorized. *Stroud v. Gwyer*, 28 Beav. 130.

If the executors are members of the firm, it appears doubtful whether the persons interested in the testator's estate have or have not an option between profits and interest. Lindley, Act, 108, citing *Vyse v. Foster*, L. R. 8 Ch., p. 334.

(b) *Amount due outgoing partner is a debt accruing at death or dissolution.*

Section 43 provides that, subject to any agreement between the partners, the amount due to an outgoing partner or the estate of a deceased partner in respect of his share, is a debt

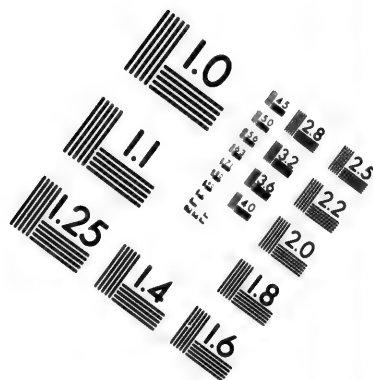
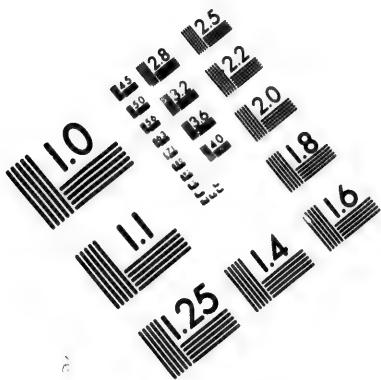
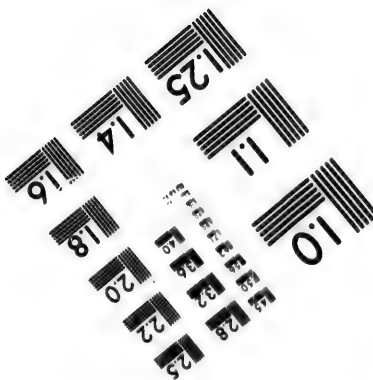
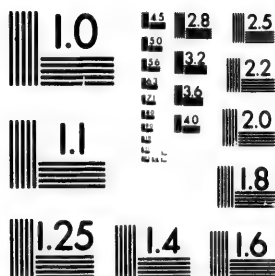


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accruing at the date of the dissolution or death. See 60 Vic. (Man.), c. 24, s. 43; N. W. T. Ord., 1899, c. 7, s. 45.

SEC. 6.—PARTNERSHIP LIEN.

The lien or quasi lien, which every partner has on the assets of the partnership, is dealt with in section 39, which states the law on this point as follows:—

39. "On the dissolution of a partnership, every partner is entitled as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets, after such payment, applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm. And for that purpose any partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm." 60 Vic. (Man.), c. 24, s. 39; R. S. B. C., c. 150, s. 40; N. W. T. Ord., 1899, c. 7, s. 41. See *Crain v. Rapple*, 20 A. R. 291, p. 294.

This equitable lien extends, upon a dissolution only, to the partnership property existing as such at the date of dissolution. Therefore, if one of two partners die, and the executors of the deceased partner allow the survivor to continue the business of the firm, there will be no lien in their favor on property acquired by him in this course of business, in addition to or in substitution for partnership property, and in the event of the bankruptcy of the surviving partner, goods brought into the business by him will belong to his creditors in the new business, not to the creditors of the former partnership. *Payne v. Hornby*, 25 Beav. 280. A surviving partner, who insisted on carrying on the business against the will of the deceased partner's representatives, would probably be estopped from setting up that property so acquired in the new business is part of the assets of the former partnership. *Pollock*, 6th Ed., p. 106. And see sec. 41, *supra*.

SEC. 7.—GOOD-WILL SOLD ON DISSOLUTION.

The good-will of the business is part of the assets of a partnership, and upon dissolution should be sold for the common benefit of the partners. Pollock, 6th Ed., pp. 107-8.

But when one partner retires from the firm, and from the business, and the other partners continue the business, the continuing partners are entitled to the good-will without paying for it, unless they have agreed to pay for it.

See *Mead v. O'Keefe*, 15 Ont. R. 84, 15 A. R. 103; Subnomine *O'Keefe v. Curran*, 17 S. C. R. 596.

In that case the plaintiff's assignee had, under the articles of partnership, been practically expelled from the firm on account of misconduct, though the dissolution was ostensibly by mutual consent, and some of the formalities required by the articles had not been complied with. In an action by the assignee of the expelled partner for a return of the amount paid by him on entering the business as the price of the good-will, it was held by the Common Pleas Divisional Court (Ontario) that he was entitled to recover. On appeal to the Court of Appeal there was a division of opinion, and the appeal was accordingly dismissed. Hagarty, C. J., however, p. 112 (in a judgment in which he differed on this particular point from all the other members of the Court) treating the dissolution as a dissolution by consent, and therefore as not provided for by the Articles of Partnership, held that the case came within the principle above set out, that it was a case where the partner retires not only from the firm, but from the business carried on by it, and therefore, the other partner was entitled to the good-will without paying for it. This view was affirmed by the Supreme Court, which held that the right to payment had been forfeited under the terms of the articles, but that, even if this were not so, as one of the remaining partners was under the terms of dissolution entitled to continue, using the trade name, "in which the good-will consists," the retiring partner could claim nothing for the good-will. And see *Lindley*, 6th Ed., p. 446.

If a partner assign his good-will in a business, it will not prevent him carrying on the same kind of business in the immediate vicinity, but he cannot, by using the name of the old firm, or otherwise, represent himself as the successor to the old firm. He may, however, if the firm name happens to have been his own, continue business in that name. Lindley, 6th Ed., 442 et seq.

Lindley goes on to say that he may also solicit business from and carry on business with the old customers and correspondents of the firm, citing among other cases *Pearson v. Pearson*, 27 Ch. D. 145.

Since the last edition of Lindley was published, however, *Pearson v. Pearson* has been overruled by the House of Lords in *Trego v. Hunt*, L. R. (1896), A. C. 7, where it was held that, when the good-will of a business is sold without further provision, the vendor may set up a rival business, but he is not entitled to canvass the customers of the old firm, and may be restrained by injunction from so doing. In *Jennings v. Jennings*, 1898, 1 Ch. 378, it was held that, when, by an agreement between the partners, one partner on dissolution was to retain "the assets," the good-will was included, though not specifically mentioned, and the continuing partner was held entitled to an injunction restraining the other partner from canvassing the old customers.

In *re David v. Matthews*, L. R. 1 Ch. (1899) 378, it was held that under an agreement "that in case of the death of one of the partners a general account of the position shall be made, including all effects and securities of whatsoever nature that they possess, and the value of such effects and securities be estimated as at the date of such decease," the good-will ought to be included in the valuation, and that it should be valued on the footing that if it were sold, the surviving partner would be at liberty to carry on a rival business, but would not have the right to solicit customers of the old firm, or carry on business under the style of the old firm. It is expressly stated in this case that the old doctrine that the good will survives to the living partner is no longer law.

When the land on which a trade is carried on is expropriated,

damage to the good-will may be a proper subject of compensation.

Re McCauley v. City of Toronto, 18 O. R. 416.

SEC. 8.—RETURN OF PREMIUM ON DISSOLUTION.

The custom of paying a premium upon entering into a partnership is too well known to require comment. But when such a premium has been paid for a partnership for a fixed term, and the partnership becomes dissolved before the expiration of such term, the question arises as to whether the party paying is entitled to a return of the premium.

The rule which was adopted by the Act may be stated as follows:—

Where one partner has paid a premium upon entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of the term otherwise than by death or the misconduct of the partner who has paid the premium, or by an agreement containing no provision for the return of the premium, the Court may order the return of the premium, or such part as it thinks just.

See Act, sec. 40, 60 Vic. (Man.), c. 24, s. 40; R. S. B. C., c. 150, s. 41. See *N. W. T. Ord.*, 1899, c. 7, s. 42.

See *Mead v O'Keefe supra*. In which case, however, in consideration of the payment of the premium all interest in the good-will of the business was sold to the partners paying the premium.

This section was intended to state the law as laid down in *Atwood v. Maude*, L. R. 3, Chy. 369. See *Lindley, Act*, 105.

In that case the Court directed a return of a part of the premium proportionate to the unexpired portion of the term of the partnership. This may be said to be the general rule on which the Court acts, though other circumstances are sometimes taken into consideration.

In the case of a partnership at will, the Court will not order a return of the premium in the absence of agreement unless the premium was obtained by fraud.

SEC. 9.—FINAL SETTLEMENT OF ACCOUNTS ON DISSOLUTION.

The rules as to final settlement of accounts are contained in section 44 of the Act.

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44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed.

(a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly if necessary by the partners individually in the proportion in which they were entitled to share profits.

(b) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order.

1. In paying the debts and liabilities of the firm to persons who are not partners therein.

2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.

3. In paying to each partner rateably what is due from the firm to him in respect of capital.

4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible. 60 Vic., c. 24, s. 44; R. S. B. C., c. 150, s. 45; N. W. T. Ord., 1899, c. 7, s. 46.

Before leaving the subject of the Act, the following sections should be noted:—

4. Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm name. 60 Vic. (Man.), c. 24, s. 4; R. S. B. C., c. 150, s. 5; N. W. T. Ord. (1899), s. 6.

A firm is not recognized by the English Law as an entity independently of the individuals who compose it. See Lindley, 6th Ed., pp. 118 et seq.

46. The rules of Equity and of Common Law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act. 60 Vic. (Man.), c. 24, s. 46; R. S. B. C., c. 150, s. 83; N. W. T. Ord., 1899, c. 7, s. 67.

The British Columbia Act does not apply to Mining Partnership. For the Mining Partnership Acts, see later.

QUEBEC LAW.**CHAPTER IV.****DISSOLUTION OF PARTNERSHIP.**

Sec. 1.—How Partnership is dissolved.

- (1) By the Efflux of Time.
- (2) By the Extinction or Loss of the Partnership Property.
- (3) By the Accomplishment of the business for which it was Contracted.
- (4) By Bankruptcy.
- (5) By the Death of one of the Partners.
- (6) By the Civil Death, or Interdiction, or Bankruptcy of one of the Partners.
- (7) By the Will of one or more of the Partners.
 - (a) In Partnerships Unlimited as to Duration.
 - (b) In Partnerships Limited as to Duration.
 - (c) Fraudulent Dissolutions.
- (8) By its business becoming Impossible or Unlawful.
- (9) By seizure of Partner's Share at instance of one of his Creditors.

Sec. 2.—Effects of Dissolution as to Third Persons.

- (1) When Partners may subsequently be bound in favor of Third Persons.
- (2) Rights of Third Persons against Property of Partnership and Partners.

Sec. 3.—Effects of Dissolution as to the Partners Themselves.

- (1) Damages resulting from Dissolution.
- (2) Cessation of Powers of Partners.
- (3) Action to Account and for Partition of Assets.
 - (a) Account (*pro socio*).
 - (b) Partition (*communi dividundo*).
- (4) Right to carry on a Similar Business.

Sec. 4.—Appointment of Liquidator after Dissolution or demand therefor.

SEC. I.—HOW PARTNERSHIP IS DISSOLVED.

The enumeration of C. C. 1892 is followed.

(1) *By the Efflux of Time.*

If the term of the Partnership be not designated, it is considered to be for the life of the Partners, subject, of course, to the other provisions of this section. C. C. 1833. It may, then, be terminated by notice, as provided in paragraph (7). Post, p. 99.

If the term of the Partnership be fixed by agreement, as is customary, that term must run its course, provided none of the other causes of dissolution intervene.

(2) *By the Extinction or Loss of the Partnership Property.*

C. C. 1893. When one of the partners has promised to put in common the property in a thing, the loss of such thing before the contribution of it has been made, dissolves the partnership with respect to all the partners.

The partnership is equally dissolved by the loss of the thing when only the enjoyment of it is put in common and the property of the thing remains with the partner.

But the partnership is not dissolved by the loss of the thing of which the property has already been brought into the partnership; unless such thing constitutes the whole capital stock of the partnership, or is so important a part of it that the business of the partnership cannot be carried on without it.

The first two paragraphs of this article reproduce in substance the article of the Code Napoleon. The last paragraph is added as expressing the views of the French authors on the subject.

If the partnership is evicted of the thing after its contribution, it has its recourse against the partner who contributed it, under C. C. 1839. (Considered ante p. 73.)

Before contribution, the loss of the thing dissolves the partnership. After contribution the loss must be of the whole capital stock of the partnership, or so important a part of it that the business of the partnership cannot be carried on without it.

(3) *By the Accomplishment of the Business for which it was Contracted.*

It is self-evident that a partnership should be dissolved when its object has been accomplished. C. C. 1892 declares that it is so.

When parties agree to share the profits on any contract they may obtain, the partnership thus created does not cease on the refusal of their tender, if they are subsequently able to obtain a sub-contract from him whose tender has been accepted, Q. B., Kane v. Wright, 1 Q. B. R., 297.

A partnership formed for two years for a certain work, which is required to be finished in that time, does not cease on the expiry of the two years, if the work be then unfinished, and the time for completing the same has been extended by him for whom it is being done. Guillaouard, No. 292.

(4) *By Bankruptcy.*

The abandonment made by a partnership must be agreed to by each of the members, and must comprise not only the property of the partnership, but also the private property of the partners. C. R., Reid v. Bisset, 15 Q. L. R. 1889.

If one or more of the members of a partnership is dead or absent from the Province, the declaration of abandonment and statement of assets and liabilities may be signed by the surviving or by the resident partners; but the abandonment does not then affect the private property of the dead or absent partner. C. C. P. 860.

When dissolution occurs by bankruptcy, the assignment of the property of a commercial partnership comprises the property and actions of the partners individually, and even the actions which they can exercise among themselves. McLean v. Stewart, R. J., 3 B. R., 434; also ante p. 74.

(5) *By the Death of one of the Partners.*

The Civil Code provides (C. C. 1030) that a person is deemed to have stipulated for himself, his heirs and legal representatives, unless the contrary is expressed, or result from the nature of the contract. Partnership is just such a contract.

In it, the personality of the partner dominates. The death of one partner frequently results in disorganization. Hence it is that, where no term is expressed, partnership only continues for the life of the partners (C. C. 1833); and where a term is expressed, the partnership is dissolved at any time, by the death of any of the partners, subject to the following article:

C. C. 1894. It may be stipulated that, in case of the death of one of the partners, the partnership shall continue with his legal representatives, or only between the surviving partners. In the latter case, the representative of the deceased partner is entitled to a division of the partnership property, only as it exists at the time of the partner's death. He cannot claim the benefit of any transaction subsequent thereto, unless such transaction is a necessary consequence of something done before the death occurred.

This article agrees with the Code Napoleon. It differs from the Roman Law as to the continuation of the partnership with the heirs. It agrees with it as to the continuation between the surviving partners.

If one of several partners die, the surviving partners may be sued without the representatives of the deceased partner being made parties to the suit. Meredith, C. J., *Stadacona Bank v. Knight*, 1 Q. L. R., p. 193.

(6) By the Civil Death, or Interdiction, or Bankruptcy of one of the Partners.

Civil Death results from condemnation to death, and to imprisonment for life. It results also from certain religious vows. C. C. 31, 32, 33, 34. It deprives the person of all his civil rights.

Interdiction may be obtained under the circumstances mentioned at ante p. 25. Interdicts are deprived of the capacity to contract.

Bankruptcy of a partner is proof that he can no longer meet his engagements. It deprives him of the administration of his property, disorganizes the management of the partnership,

and diminishes the confidence which third parties can have in the partners, and which the latter can have in the insolvent. It further causes the latter to fear that they alone will have to bear the partnership losses.

(7) *By the Will of one or more of the Partners.*

(a) *In Partnerships Unlimited as to Duration.*

C. C. 1895. Those partnerships only which are not limited as to duration can be dissolved at the will of one of the partners by a notice to all the others of his renunciation. Such renunciation must be in good faith, and not made at a time unfavorable for the partnership.

This article agrees in substance with the French, English and Scotch law.

The Code Napoleon (C. N. 1870), however, goes further, and states that "the renunciation is not in good faith when the partner renounces in order to appropriate to himself the profit which the partners intended to withdraw in common. It is made at a time 'unfavorable for the partnership' when the things are no longer entire, and it is important to the partnership that dissolution be postponed."

This would assist in the interpretation of our own article.

(b) *In Partnerships Limited as to Duration.*

C. C. 1896. The dissolution of a partnership limited as to duration may be demanded by one of the partners before the expiration of the stipulated term, upon just cause shown, or when another partner fails to fulfil his engagement, or is guilty of gross misconduct, or from habitual infirmity or physical impossibility, is unable to attend to the business of the partnership, or when his condition and status are essentially changed, and in other cases of a like nature.

This article is based on the Roman Law, and is a little more detailed than that of the Code Napoleon. In other instances, dissolution takes place by operation of law or simple notice. Under this article, an action at law is necessary to obtain that result, and just cause must be shown. Instances of what may be considered just cause are given in the article.

For example, a partnership is dissolved by the marriage of a female partner, who has thereby changed her status and condition. *Antoine v. Dallaire*, 2 R. de L., 74. But this dissolution can only be set up by those who have contracted with the consorts after the marriage. *Beaudry-Lacantinerie, Société*, No. 59.

Other examples of "just causes" which would justify a demand for dissolution are:—The loss of partnership property, which, though insufficient to cause dissolution, ipso facto, under paragraph 2 of this section, is sufficient to prevent the carrying on of the partnership; the absence of profits; the appointment of a judicial adviser to one partner; and grave misunderstanding between the partners. War between two countries, however, does not dissolve nor is it cause for dissolution of a partnership between members of the two belligerent nations. *Beaudry-Lacantinerie, Société*, Nos. 462, 463, 464.

(c) *Fraudulent Dissolutions.*

A case in which the Supreme Court held the dissolution to have been simulated is that of *McLaren & Merchants Bank*, 23 S. C. R., 143.

An instance of a fraudulent dissolution is in the case of *Hughes & Caverhill*, R. J., 15 C. S. 225. Confirmed in Review.

(8) *By the Business of the Partnership becoming Impossible or Unlawful.*

This cause of dissolution is self-evident.

In the absence of agreement, it would, without doubt, be necessary to obtain a judgment under the foregoing article, in order to give effect to dissolution, on the above grounds.

(9) *By Seizure of Partner's Share at instance of one of his Creditors.*

Commercial partnerships are also terminated by judgment maintaining, at the instance of a creditor of one of the partners, the seizure of such partner's share in the stock of the

partnership, or at the instance of one of the partners after such seizure. C. C. 1892.

This paragraph of article C. C. 1892 was added by the statute 60 Vic., cap. 50, s. 32, owing to a change made in the Code of Civil Procedure in 1897.

The new article in the Code of Civil Procedure is as follows:—

C. P. 698. Whenever, by virtue of a judgment rendered against a partner personally, a seizure by garnishment is served upon a commercial partnership to which he belongs, the partnership must, if it is not indebted to the judgment debtor in an amount sufficient to discharge the seizure, state in its declaration as garnishee, in addition to the requirements of article 685, the share of the judgment debtor in the stock and profits of the partnership.

The seizure remains binding even as to profits not earned or in process of being earned at the time of its service.

If, after the declaration, the partnership becomes indebted to the judgment debtor, or if it is dissolved, the garnishees must forthwith make a new declaration.

For the purpose of rendering such seizure effectual, the judge may order the production of such books, documents and statements, allow the examination of such witnesses, and give such other orders as he may deem necessary.

If the partnership fails to comply with the above rules, it becomes subject to the same responsibility as in the case of failure to make the original declaration.

This rule does not apply to joint stock companies incorporated by Royal Charter or by Act of Parliament, or of the Legislature.

The result of a successful seizure by a creditor, of a partner's share in the stock of the partnership under article C. C. P. 698, is, therefore, the dissolution of the partnership. This applies, however, only to Commercial Partnerships. Consequently, a partnership between architects not being a commercial one, its members cannot be compelled to produce their books, documents, etc., under this article, *Manson v. Brodeur*, 1 P. R., 192.

The declaration of the garnishee or partnership must disclose the share of the defendant in the stock and profits of the partnership, even when the declaration of the garnishee denies

all indebtedness to the defendant; and where the declaration of the garnishee fails to give such information, the Court, on motion to reject the declaration, will order the garnishee to complete his declaration by setting forth the share of the defendant in the stock and profits of the partnership. *Leet v. Singer & Radford*, R. J., 15 C. S., 142.

SEC. 2.—THE EFFECTS OF DISSOLUTION AS TO THIRD PERSONS.

There are no articles in the Code Napoleon corresponding with the following. The rules which they embody were drawn by the codifiers from various sources.

(1) *When partners may subsequently be bound in favor of Third Persons.*

C. C. 1897. The mandate and powers of the partners to act for the partnership cease with its dissolution, except for such acts as are a necessary consequence of business already begun; nevertheless, whatever is done in the usual course of dealing and business of the partnership, by a partner acting in good faith and in ignorance of the dissolution, binds the other partners in the same manner as if the partnership still subsisted.

This is the rule of the French Law, both ancient and modern, but it differs from that of England, Scotland and the United States. In the latter countries, the partners or survivors have the right to liquidate the property of the partnership, retaining for this purpose only the powers which they had before the dissolution. The codifiers, while thinking that perhaps this rule was the more just, did not feel disposed to alter the law of the Province, in this respect.

A partner cannot confess judgment on behalf of a partnership after dissolution (*Moore v. O'Leary*, 9 L. C. J., 164); nor make an admission which will bind his former partners (*Dansereau & Gervais*, R. L., 12 C. S., 86); nor borrow money in the name of the firm for the purposes of the partnership business. *McBean & McBean*, 6 L. N. 95. Nor has one partner the sole right to receive the letters addressed to the

former partnership, even though he has acquired all its debts. *C. R. Bernard v. Allaire*, 17 Q. L. R., 198.

In the case of a civil partnership, for example, between lawyers, one of the former partners, after dissolution, can only give a valid receipt for his own share, one-half, of a debt owing the partnership. If the debtor pays him the whole debt he can be compelled to pay the other partner his share in addition. *De Montigny v. De Bellefeuille*, 30 L. C. J. 299.

C. C. 1900. The dissolution of a partnership by the terms of the contract, or the voluntary act of the partners, or by the expiration of time, or by the death or retirement otherwise of a partner, does not affect the rights of third persons dealing afterwards with one of the partners on account of the partnership firm, except in the cases following:

1. When notice is given as required by law or the usage of trade;
2. When the partnership is limited to a particular enterprise or adventure, which is terminated before the transaction takes place;
3. When the transaction is not within the usual course of dealing and business of the partnership;
4. When the transaction is in bad faith or illegal, or otherwise void;
5. When the partner sought to be charged is a dormant or unknown partner, to whom no credit is actually given, and who has retired before the transaction takes place.

The codifiers speak of this article as follows:—

"It relates to the effect of the dissolution upon the right of third parties. After a careful examination of the books under the French and other systems of law, the article has been prepared, declaring first the general rule that dissolution by any of the several means specified in it does not affect the rights of third persons, afterwards dealing with the partners as such, and then enumerating the exceptions to that rule. The enumeration has been chiefly taken from Story's treatise on partnership, as that author presents the subject in a very compact and complete form. His opinion is not, however, altogether followed upon the question of notice. Great difference of opinion is found upon that subject, and much subtlety of distinction appears in the books in stating the

"cases in which notice is, or is not, necessary. Pothier holds that it is not necessary when the partnership expires by efflux of time, according to the contract, and that it is necessary in cases of dissolution by death. The English, Scotch and American law on the contrary seems to be that it is necessary in the former case and not in the latter. This article makes a notice necessary in both cases, as that seems to be the safest and most equitable rule; for it is right that all the practical precautions should be taken to guard innocent third persons from surprise and loss. In modern France the subject of dissolution is regulated by article 46, Code de Commerce, and the other articles there referred to. The system of registration and publication of partnership in that country is much more complete than our own. With respect to the other provisions of the article, they are coincident with our law, and the other systems referred to, and do not call for any special observation."

Partners who have filed a certificate of partnership continue liable after a dissolution, if they have omitted to file under the Partnership Act a certificate of dissolution. *Murphy v. Page*, 5 L. C. J. 335; *Jackson v. Page*, 6 L. C. J. 105.

(2) *Rights of Third Persons against Property of Partnership and Partners.*

C. C. 1899. The property of the partnership is to be applied to the payment of the creditors of the firm in preference to the separate creditors of any partner, and in case such property be found insufficient for the purpose, the private properties of the partners, or of any one of them, is also to be applied to the payment of the debts of the partnership, but only after the payment out of it of the separate creditors of such partners or partner respectively.

This article is based on a section of the old Consolidated Statutes of Lower Canada.

Partnership, as has been noted (ante p. 18), is by the French Law considered a moral entity, or a person quite distinct and apart from the partners themselves. The partnership property being that of this moral entity or person, could not, according

to the law, as it formerly existed, be made liable for the debts of any of the partners individually.

No judgment against an individual partner could, formerly, be executed against it.

Under late amendments to the law, however, the share of a partner in the profits and assets of the partnership can now be seized, and its dissolution thus brought about. C. C. 1892, and C. C. P. 698, ante p. 96. The debts of the partnership would, of course, have preference in virtue of article 1899.

If, after dissolution, one partner assigns all the assets to the other, the creditors of the partnership retain their preference over the creditors of the latter partner until the liquidation of the partnership is completed. Q. B., Lemay & Leveille, R. J., 4 B. R. 187. After the dissolution of the partnership, it can be sued and summoned, and the partners made jointly and severally liable as if not dissolved for a debt contracted during its existence. Peoples Bank & Gauthier, R. J., 14 C. S., 20; C. R., Gordon & McDonald, 4 L. N. 133.

Before dissolution, all the partners must be sued for all obligations of the partnership, and jointly and severally. The judgment may be executed against any or all of them. Brasserie de Beaufort & Dinan, R. J., 14 C. S., 284.

When the endorser and maker of a promissory note are the sole members of a partnership, the property of the latter is liable for judgment on the note, saving of course the rights of the creditors of the partnership itself. C. R., Grothe & Lafleur, R. J., 9 C. S., 156.

The debtor of a partnership under a collective name can, after its dissolution, set up in compensation against a claim by the former partnership, a debt which he has against one of its partners to the extent of the share of the latter. Q. B., Gauthier & Lacroix, 12 R. L., 508.

SEC 3.—EFFECTS OF DISSOLUTION AS TO PARTNERS THEMSELVES.

(1) *Damages resulting from Dissolution.*

Such damages are due in virtue of the general principle laid down by C. C. 1845, already mentioned (ante p. 79). The

partner by whose fault the partnership has been judicially dissolved is liable for damages caused thereby. If dissolution has been caused by eviction of one of the things contributed (see C. C. 1839, ante pp. 73 and 96, and C. C. 1893, ante p. 96), the partner, whose share has thus been taken from the partnership, is liable in damages. But, in the absence of any fault, a partner is not liable for damages in any way. Beaudry-Lacantinerie, No. 472.

(2) *Cessation of Powers of Partners.*

See Article C. C. 1897, (ante p. 102).

When the title of a debt of a partnership is a judgment it should be executed in the name of the partnership; but only for the share of the former member who executes it, and the writ of execution should so state. When the partnership has already obtained judgment against the debtor for the entire debt, one member cannot, after dissolution, obtain another judgment for his share of the same debt, but can execute for his share the judgment already obtained. *Crepeau v. Boisivert*, R. J., 13 C. S., 405.

(3) *Action to Account and for Partition of Assets.*

C. C. 1898. Upon the dissolution of the partnership, each partner or his legal representative may demand of his co-partners an account and partition of the property of the partnership; such partition to be made according to the rules relating to the partition of successions, in so far as they can be made to apply.

Nevertheless, in commercial partnerships these rules are to be applied only when they are consistent with the laws and usages specially applicable in commercial matters.

This is probably the most important section of the law of partnership. Under it, certainly, the greatest amount of litigation arises. Strange to say, the codifiers make no comment upon it, and we are left to conjecture what are the "laws and usages specially applicable in commercial matters," which are referred to. Any custom of trade might successfully be pleaded in variance of the rules relating to the partition of successions.

The article of the Code Napoleon contains neither the first

clause of the first paragraph, nor the last paragraph of our article.

According to Pothier (Société No. 161), each partner has the choice of an action to account (*pro socio*) or an action to obtain a partition (*communi dividundo*). Our article speaks of both conjointly.

"Each partner may demand of his co-partners an account and partition of the property of the partnership." It is to be presumed that one or other may be taken, or both joined in one.

These actions should be taken against all the partners or their heirs. If taken against one or a part of them, those sued can demand that the other be included as well. The Court should suspend the action for that purpose. *Q. B., Doak v. Smith*, 15 L. C. J., 58. Those who are not sued may intervene in the action without waiting to be summoned.

These actions cannot be prescribed. Pothier 166.

(a) Account.

The Rules of Practice governing accounting are to be found in C. P. 566 and following, to be found in Part IV., concerning Practice.

The Supreme Court of Canada has held that, where one of the partners has been entrusted with the collection of moneys due as the mandatory of the others, any of his co-partners may bring suit against him directly, either for an account under the mandate, or for money had and received. *Lefebvre v. Aubry*, 26 S. C. R., 602.

When a partnership has been dissolved and a liquidator appointed, one of the partners cannot, during the liquidation, demand an account from his partners. *Deslongchamps v. Poirier*, R. J., 6 C. S., 273.

After an assignment, however, when one of the partners has repurchased from the assignee all the assets of the partnership, and obtained a discharge from the creditor for himself and his co-partners, it has been held by the Privy Council that one of the latter can sue and recover from the former the plaintiff's share of the capital of the partnership, which had

been improperly drawn out by the defendant during its continuance. *Stewart & McLean*, ante pp. 74 and 97.

If the defendant fails to render an account within a delay fixed by the judgment, the plaintiff can force him to pay him a certain sum to stand for the balance of the account, had it been rendered. *C. R., Bertram & Sarrazin*, 29 L. C. J., 290.

A partner who calls upon a co-partner to account after dissolution, must himself render an account, otherwise his action is ill-founded. *Baile v. Baile*, R. J., 7 C. S., 79; *C. R., Blais & Vallières*, 10 Q. L. R., 382.

The books of the partnership make proof as between the partners. *Baudry-Lacantinerie*, No. 488.

Where it is impossible to ascertain from the books the true amount of the outstanding accounts due the firm, the Court will divide the amount ascertained, reserving to each party his rights against the other for any balance due. *Q. B., Powell & Robb*, 8 R. L., 125.

(b) Partition.

The rules relating to the partition of successions are to be found in the Civil Code, articles 689 and seq. Their application is not without difficulty, and would not frequently occur in Commercial Partnerships, as rules for partition are usually inserted in the partnership deed. They must be applied, however, when there is no other arrangement between the partners. *Lefebvre v. Aubry*, 26 S. C. R. 602. Each partner may demand the partition. Minors cannot demand the partition of immoveable property, but those of majority can demand such partition as against minors. *Pothier (Bugnet) Société*, Nos. 163 and 164.

Usually, partition can be demanded as soon as the partnership is dissolved. It may, however, be agreed or ordered that the partition shall be deferred during a limited time, if there be any reason of utility which justifies the delay. *C. C. 689*.

Creditors of the partners may take this action, when, to the creditors' prejudice, they refuse to do so. *C. C. 1031, Guillaouard*, No. 342. They have, however, no right to intervene in the partition. *Beaudry-Lacantinerie*, No. 483. The

demand must apply to the whole of the assets, and not alone to any one thing or class (Id. 484).

The valuation of immoveables is made by experts who are chosen by the parties interested, or who, upon the refusal of such parties, are officially appointed.

The report of the experts must declare the grounds of the valuation, it must indicate whether the thing estimated can be conveniently divided, and in what manner, and must determine, in case of division, each of the portions which may be made of it, and the value of such portion. C. C. 696.

Each partner must return into the mass the sums in which he is indebted. C. C. 700; Beaudry-Lacantinerie, No. 487. In the absence of agreement, the partners cannot compel a third party to return a partner's share, which he has acquired, notwithstanding C. C. 710. Baudry-Lacantinerie, No. 244.

The partition should be not only of the assets (*fonds social*), but of the profits realized, less that portion which should have been divided during the partnership. Baudry-Lacantinerie, No. 490.

The partition is retro-active only to the date of the dissolution and not to the date of the acquisition of the property by the partnership. Girard v. Rousseau, 31 L. C. J., 112; M. L. R., 3 C. S., 293.

Each of the partners may demand his share in kind of the moveable and immoveable property of the partnership, nevertheless, if there be seizing or opposing creditors, or if the majority of the partners deem a sale necessary to discharge the liabilities of the partnership, the moveable property is publicly sold in the ordinary manner. C. C. 697.

But a partner cannot receive back in kind what he has given in full property. He does receive back in kind that of which he has merely given the enjoyment.

If, however, it is a thing which consumes by use, or deteriorates by keeping, or which was intended to be sold, or which was contributed to the partnership at a fixed valuation, he cannot be forced to take it back, as C. C. 1846 (ante p 77). places these at the risk of the partnership and hence the property in them is practically transferred to it.

On the other hand he may demand its equivalent or its

fixed value. He cannot demand any increase in value. If the value of the thing has not been fixed, it is estimated as it was at the formation of the partnership. Baudry-Lacantinerie, Nos. 500-501.

When two partners make a partition of shares, forming a part of the partnership assets, and one is evicted from his share, the other partner is not liable for more than the balance of the shares at the time of the partition; that is, his obligation is merely to equalize the value of the portions, without a new partition. Privy Council, Prentice & McDougall, 8 L. N., 162; 4 Q. B. R., 91.

The partner, who has furnished his name, can take it back. Baudry-Lacantinerie, No. 503.

Possibly each partner, after dissolution, has a right to the use of the firm name for the continuance of the business; but the partner who has left the firm and discontinued business, clearly has no legal claim against the other for a conjectured value of the good will attaching to the use of the name under which the business had been established. Coristine & Hawes, Q. B., Montreal, 1899, not yet reported.

If the moveables cannot conveniently be divided, they must be sold by licitation before the court. Nevertheless, the partners may consent to the licitation being made before a notary upon the choice of whom they agree. C. C. 698.

Buildings erected by a partnership under a collective name on land belonging to one of the members, belong, after dissolution, to all its members and not to the owner of the land alone; and they can be sold and the proceeds divided at the suit of any one of the partners. Q. B., Sangster v. Hood, 18 R. L., 40; M. L. R. 5 and Q. B., 384.

After the moveable and immoveable property have been estimated and sold, if there be cause for it, the court may send the parties before a notary upon whom they have agreed, or has been officially named if they have not agreed in their choice.

They are to proceed, before such notary, to the account to which they are bound towards one another to the formation of the general mass, the composition of the shares and the fixing

of the compensation to be furnished to each of the co-partitioners. C. C. 699.

C. C. 701 to C. C. 753 contain minor details more or less applicable to partnerships, but rarely applied.

(4) *Right to carry on a Similar Business.*

Each partner can, after dissolution, carry on a business analogous to that of the former partnership. A covenant depriving a partner of this right, is null unless it is limited as to time or place. Baudry-Lacantinerie No. 25; Cook v. Brisebois, R. J., 16 C. S. 46.

SEC. 4.—APPOINTMENT OF LIQUIDATOR AFTER DISSOLUTION OR DEMAND THEREFOR.

C. C. 1896a. If a partnership be dissolved or a judicial demand be made for such dissolution, the Court or the judge, upon the demand of one of the partners, after notice given to the others, has power to appoint one or more liquidators.

The liquidators thus appointed must be sworn to well and faithfully perform the duties of their office.

They immediately give notice of their appointment by an advertisement to that effect published in the Quebec Official Gazette and in two newspapers, one in the French and the other in the English language, published at the place of business of the partnership, or at the nearest place, and in such other manner as the Court or judge may prescribe.

They become pleno jure seized of the assets of the partnership for purposes of the liquidation; they furnish the security prescribed by the Court or judge, and are in all respects subject to the summary jurisdiction of such Court or judge.

They possess all the powers and are subject to all the obligations of judicial sequestrators, with the exception of the putting into possession, which is done without the intermediary of a bailiff.

Acts, exceeding those of administration, cannot be performed by the liquidators without the consent of all the partners, and, in default of such consent, only with the approval of the Court or judge, after previous notice to the members of the partnership.

The remuneration of the liquidators is fixed by the Court or judge.

Proceedings respecting the appointment of liquidators and the performance of the duties of their office are summary.

Provisional execution takes place notwithstanding the approval, saving the right of the Court to which the cause is taken in appeal to summarily suspend such execution.

Two judges of the Court seized of the appeal may also give such order for suspension after notice to the adverse party.

The discretion given by this article to the judge to appoint a liquidator can, however, only be exercised in that sense, upon cause shown against the partner complained of.

A demand for the dissolution of a partnership is not, in itself, a sufficient cause to deprive the partners, to whom the administration of the partnership has been confided by the partnership articles, of such administration. Q. B., Gerhardt & Davis, M. L. R., 7 Q. B., 473.

When a partnership has been dissolved and a liquidator appointed, one of the partners cannot, during the liquidation, demand an account from his fellow-partners. Deslongchamps v. Poirier, R. J., 6 C. S., 273.

Neither can the liquidator pay over the money in his hands to one of the partners without an order from the Court. He is bound to render an account and deliver over the effects in his possession, as sequestrator, before he is entitled to his discharge. Phillips v. Kurr, R. J., 7 C. S., 358.

It is for the judge to decide whether a partnership exists or not. C. R., Hingram v. Bennet, R. J., 1 C. S., 269.

CHAPTER V.

RULES OF LAW NOT COMPRISED IN THE IMPERIAL ACT.

There are several subjects not dealt with in the Act, which will be noticed very briefly in this Chapter.

They are:—

- 1st.—Persons capable of entering into an agreement of Partnership.
- 2nd.—The Statute of Limitations as it affects Partnerships.
- 3rd.—Administration of the partnership assets on Insolvency.

I.—PERSONS CAPABLE OF ENTERING INTO AN AGREEMENT OF PARTNERSHIP.

Any person who is capable of entering into a binding agreement is also capable of entering into a contract of partnership. And as there are certain persons who are under disability with respect to contracts generally, so there are certain persons who cannot make a valid agreement to enter into partnership. Married women, infants and lunatics are the principal classes of persons under a disability as to contracts in general, and these disabilities affect their rights to enter into partnership. Foreigners, too, or rather persons residing in a foreign country, which is at war with Great Britain, are under a disability, and if a partnership exist between a person residing in a foreign country and a person residing in British Dominions, the breaking out of war between the two countries will operate as a dissolution of the partnership.

(a) *Married Women.*

A married woman may make a valid contract of partnership, but only her separate estate will be liable for the debts of the partnership. Before the Married Woman's Property Acts

came into force, a husband and wife could not enter into partnership. "They could enter into a quasi partnership in this sense that the husband might carry on the business under a trust declared for the wife." Lush, p. 170, citing *re Childs*, L. R. 9, ch. 508. But they could not do more than this. Now there is no such restriction. She may enter into partnership with her husband, and may of course enter into partnership with a third person, "and incur the liabilities of a partner, and the fact that she is carrying on business as a partner was sufficient evidence to show that she was possessed of separate estate at the time when it was necessary to prove the existence of separate estate to make her liable on a contract made under the Act of 1882" (Imp.). See Lush, p. 170.

(b) *Infants.*

Though an infant may be a member of a partnership, he cannot be made liable for the partnership debts, unless he has been guilty of fraud, but if he repudiates the liabilities, he cannot share in the profits, and he may not only repudiate the liabilities, but he may at his option avoid the contract of partnership itself either before he comes of age, or within a reasonable time thereafter. If, after he comes of age, he does not repudiate the contract of partnership within a reasonable time, then he will be deemed to be a partner and liable for the debts incurred after he has attained his majority. See Lindley, 6th Ed., p. 82-4; Simpson on Infants, 45. But if he has made no representation he need not repudiate. *Woods v. Woods*, 3 Man. 33.

(c) *Lunatics.*

A lunatic may enter into a binding contract of partnership, and when entered into bona fide and without knowledge of the lunacy it cannot be set aside at the option of the lunatic. If a member of a partnership become insane, this in itself will not operate as a dissolution of the partnership. Any dealings with a man known to be a lunatic are, however, liable to be impeached. See Lindley, 6th Ed., p. 84.

See *supra* as to when a dissolution will be granted on the ground of lunacy.

2ND.—STATUTE OF LIMITATIONS.

"So long as a partnership is subsisting and each partner is enjoying his own property, the Statute of Limitations has, it is conceived, no application at all; but as soon as a partnership is dissolved, or there is any exclusion of one partner by the others, the case is very different, and the Statute begins to run." Lindley, 6th Ed., 512, citing *Noyes v. Crawley*, 10 Ch. D., 31. In *Tooth v. Kettridge*, 24 S. C. R., 287, this case was followed, and it was also held that long delay, if not absolute evidence, was at least a presumption of acquiescence. In *West v. Benjamin*, 29 S. C. R., 282, mutual releases based on erroneous statements were set aside, and the accounts which had been settled at various times were opened up, though these settlements had been made more than six years before action brought. The question of the Statute, though set up in the pleadings and discussed on the argument, is not dealt with in the judgments.

See also *Betjemann v. Betjemann*, 1895, 2 Chy., 474. The *Pongola*, 73 L. T. 512.

3RD.—ADMINISTERING ASSETS ON INSOLVENCY.

The question of administration of assets on the insolvency of a firm, or of one of the partners, is another point not dealt with by the Act.

The general principle upon which the Common Law proceeded was adopted by the English Bankruptcy Act, 1883, and is expressed as follows in sections 40 (3) and 59 (1) of that Act:—

40 (3).—In the case of partners, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates, in proportion to the right and interest of each partner in the joint estate.

59 (1).—Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the

other partners of the firm, or any of them, shall not receive any dividend out of the separate property till the separate creditors have received the full amount of their respective debts. This being the same as the Common Law, is the rule in force in Canada. Cf. *ex-parte Cook*, 2 P. W. 500, and see *Lindley*, 6th Ed., pp. 709-10.

R. S. O., cap. 147, sec. 7, provides that:—"If any assignor or assignors executing an assignment under this Act for the general benefit of his or their creditors, owes ~~or~~ owe debts both individually and as a member of a co-partnership, or as a member of different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. R. S. M. cap. 7, s. 31; 61 Vic., N.S. c. 11, s. 6; 58 V., N.B., c. 6, s. 5, and see R. S. B.C., c. 102, s. 9.

The same rule applies in the case of a deceased partner. *Lodge v. Pritchard*, 1 De G. J. & S. 610.

Partner cannot rank on Separate Estate of Co-Partner.

As the surplus of separate estate after paying the separate creditors is available for payment of the firm debts, it follows on the principle that a creditor cannot compete with his own debtor that a partner could not rank on the separate estate of his insolvent co-partner, because by so doing he would impair the surplus out of which the firm creditors are entitled to be paid. If, however, the separate estate is insolvent apart from the claim of the partner, the partner may rank with the separate creditors.

In *re Ruby*, 24 A. R. Ont. 509, *Boyd, C.*, at p. 516, says:—"The rule in administering assets which precludes all partners from ranking as a separate creditor of his co-partner was established not so much with reference to the separate creditors, as for the advantage of the joint creditors, because the joint creditors have the right to come in upon the separate estate of the one partner after his separate creditors are paid in full, and if the other partners were allowed to prove for a

separate claim against his co-partner, it would tend to reduce the amount of the (supposed) surplus available for the joint creditors. But if the reason for the rule disappears, the rule itself goes." And in that case it was held that, as the separate estate was insolvent, apart from the claim of the partner, the partner could rank with the separate creditors. Again, if a partner pay all the partnership debts, or place assets which are sufficient to meet all the firm debts at the disposal of the bankrupt's estate, he may rank on the separate estate. The decision in *re Ruby* was based on this ground also.

It is provided by R. S. O., c. 132, s. 1, that on the administration of the estate of a deceased person a creditor holding security shall in case of a deficiency of assets, value his security, and when the claim of the creditor is based on a negotiable instrument upon which the estate of the deceased debtor is only secondarily liable, and which are not mature, the creditor shall be considered to hold security within the meaning of this section.

It was held under this section that a partner who has individually joined as the maker of a promissory note of his firm for their accommodation is not indirectly or secondarily liable within the meaning of the above section, which at that time was contained in 59 Vic. (Ont.), c. 22, s. 1, but that he is primarily liable, and the holder of such a note need not value his security.

CHAPTER VI.

MINING PARTNERSHIPS.

Speaking generally, mining partnerships are regulated by the same rules as other partnerships, but, as we shall see presently, special statutory provisions have been enacted in British Columbia regulating Mining Partnerships in that Province. As we have seen at p. 14, property may be held by two or more persons simply as co-owners, in which case each is entitled to an account from the others of the profits they have derived from the property, and each has a right to assign his share, and, in the case of real estate, to have the property partitioned. Again, property may be held by two or more persons as co-owners, and they may be partners in the profits derived therefrom, or they may be partners both with respect to the property and the profits, in which latter case "the mutual rights and obligations of the owners are determined partly by the law of partnership, and partly by the law of co-ownership," Lindley, 6th Ed., p. 29, et seq. When the property consists in a mine, the above rules equally apply, subject to the statutory provisions in force in British Columbia.

Lindley, 6th Ed., p. 29, gives the following rules, which apply to the last of the above-mentioned cases, viz.: When two or more persons hold the property as co-owners and are partners with respect to the profits:

"1. Each co-owner may transfer his interest in the mine and in the partnership working it without the consent of the other owners. *Bentley v. Bates*, 4 Y. and C. Ex., 182. *Crawshay v. Maule*, 1 Swanst, 517."

"2. Each owner is entitled to maintain an action for an account against the others without seeking for a dissolution of the partnership. *Bentley v. Bates* (supra)."

"3. Upon a dissolution of the partnership, the mine itself not being partnership property, must be divided amongst its several owners, and not sold. *Steward v. Blakeway*, 4 Ch. 603, and 6 Eq. 479, unless under the Statute enabling sales to be made in lieu of partition."

"4. As between the real and personal representative of a deceased partner, his share of the mine will be real and not personal estate. *Steward v. Blakeway* (supra)."

5. "With a view to a dissolution the Court will, if necessary, appoint a receiver and manager to carry on the mine for the benefit of all parties interested. *Roberts v. Eberhardt*, Kay 148; *Lees v. Jones*, 3 Jur. N. S. 954; *Jeffreys v. Smith*, 1 J. & W. 302; *Rowe v. Wood*, 2 J. & W. 553; *Wynget v. Heathcote*, cited in *Bentley v. Bates* (supra)."

6. "The obligation of each co-owner to account to the others is the same as that of one partner to account to his co-partners, and much more extensive therefore than the obligation which exists in a case of mere co-ownership. The lien which each partner has on the shares of his co-partners for what is due from them to the partnership extends to cases of this class (i.e., co-owners sharing in the profits), as does also the obligation which one partner is under to account to his co-partners for benefits he may have received in respect of the common property."

In *Kahn v. Central Smelting Co.*, 102 U. S. 641, it was held that owners of a mine, who co-operate in working it, constitute a mining partnership; and such a partnership is not dissolved by the death, bankruptcy, assignment or mortgage of the share of one of its members. And see *Bissill v. Foss*, 114 U. S. 252.

As a large amount of the business in British Columbia consists in mining, and as many miners enter into partnership without foreseeing or providing for the contingencies which naturally arise out of the relationship of partners, the Legislature has provided statutory articles which are to be in force when there is no written agreement regulating the rights of the partners.

One set of these articles is to be found in the Minerals Act, R. S. B. C. 135, and the other in the Placer Mining Act, R. S. B. C. 136.

The provisions of each are similar, with the modifications necessarily incident to the different kinds of mining with which they respectively deal. The above-mentioned Acts do not apply to coal mines.

It should be noted that these Acts presuppose an agreement for partnership; they do not create a partnership if it does not already exist. Two persons, for instance, might be merely co-owners of a mine, but not partners, in which case the Acts would not apply. Where, however, there is a mining partnership which has no written articles, the Acts step in and supply statutory articles.

PARTNERSHIPS IN MINES OTHER THAN COAL.

R. S. B. C., c. 135, s. 59. All mining partnerships shall be governed by the provisions hereof, unless they shall have other and written articles of partnership.

60. A mining partnership shall, unless otherwise agreed upon, be deemed to be a yearly partnership, renewable from year to year by tacit consent.

61. The business of the partnership shall be mining and such other matters as pertain solely thereto.

62. Mining partnerships can locate and record in the partnership name a mineral claim for each partner, but the name of every partner and the number of every partner's free miner's certificate shall be on the record of every such claim. The partnership name must appear on every such record, and all the claims so taken up shall be the property of the partnership: Provided always that no free miner who is the member of a mining partnership holding by right of location a mineral claim shall be entitled to hold by right of location in his own name or in the name of any other partnership any interest in any other mineral claim on the same vein or lode on which the partnership claim is situate.

63. Should any partner fail to keep up his free miner's certificate, such failure shall not cause a forfeiture, or act as an

abandonment of the partnership claim, but the share of the partner who shall so fail to keep up his free miner's certificate shall ipso facto be and become vested in his partners, pro rata, according to their former interests, on the said partners paying the free miner's certificate for the year.

See *McNerhanie v. Archibald*, 6 B. C. R. 260, 29 S. C. R. 564.

64. A partner in any mining partnership, or his agent authorized in writing, shall at any meeting thereof be entitled to vote upon any interest or fraction of an interest which he may hold therein; but the result of the votes given shall be determined by the number of the full interests voted upon, and not by the number of partners voting at such meeting.

65. A majority of such votes may decide when, how long, and in what manner to work the partnership claim, the number of men to be employed, and the extent and manner of levying the assessments to defray the expenses incurred by the partnership. Such majority may also choose a foreman or manager, who shall represent the partnership, and sue and be sued in the name of the partnership for assessments and otherwise; and he shall have power to bind them by his contracts. Every partner or his duly authorized agent shall be entitled to represent his interest in the partnership property by work and labour so long as such work and labour be satisfactory to the foreman or manager. In the event of such workman being discharged by the foreman or manager, the Court having jurisdiction in mining disputes may, if requested, summon the foreman or manager before it, and upon hearing the facts, make such order as it shall deem just.

66. All assessments shall be payable within thirty days after being made.

67. Any partner making default in payment after receiving a notice specifying the amount due by him shall, if such amount be correct, be personally liable therefor to the partnership, and his interest in the partnership property may be sold by the partnership for the payment of the debt, and any further assessment which may have accrued thereon up to the day of sale, together with all costs and charges occasioned by

such default; and if the proceeds of the sale be insufficient to pay off the several sums mentioned, the Court having jurisdiction in mining disputes upon being applied to, shall issue an order directed to the Sheriff to seize and sell any other personal property of the debtor. Notices of sale shall, in either of the above cases, be conspicuously posted thirty clear days prior to the day of sale in the vicinity of such mining or other property, and on the Court House or Mining Recorder's office nearest thereto. But if such partner be absent from the district, such notices shall be posted as aforesaid sixty clear days before the day of sale, and a copy of such notice shall be published in some newspaper circulating in the district wherein such mining or other property is situate. Such sale shall be by public auction to the highest bidder. The purchaser shall be entitled to possession of the property sold, and to a bill of sale therefor signed by the auctioneer; such bill of sale shall confer such title upon the purchaser as the owner had. And for the purpose of carrying out the provisions of this section the Mining Recorder of the mining division in which the property to be sold is situate, or some one appointed by him, may act as auctioneer.

68. After a notice of abandonment in writing shall have been served on the foreman or manager of a partnership by any member thereof, and duly recorded, such member shall not be liable for any debts or other liabilities of the partnership incurred after service and record of such notice, and no member shall be deemed to have abandoned an interest until service and record of such notice.

69. Upon the abandonment of any share in a mining partnership the title to the abandoned share shall vest in the continuing partners, pro rata, according to their former interests.

70. Any partner shall be entitled to sell or contract for the sale of his interest in the partnership property, but such interest shall continue liable for all the debts of the partnership.

71. No partner shall, after a bill of sale conveying his interest has been recorded, be liable for any indebtedness of the partnership incurred thereafter.

LIMITED LIABILITY.

72. Any mining partnership composed of two or more free miners may limit the liability of its members upon complying with the requirements following, that is to say:

Upon filing with the Mining Recorder a declaratory statement containing the name of the partnership, the location and size of every partnership claim, and the particular interest of each partner; and also placing upon a conspicuous part of every such claim in large letters the name of the partnership, followed by the words "Limited Liability."

73. The words "Limited Liability" shall thereupon become part of the partnership name.

74. After such conditions shall have been complied with, no member of such partnership shall be liable for any indebtedness incurred thereafter beyond an amount proportioned to his interest in the partnership.

75. Every such partnership shall keep a correct account of its assets and liabilities, together with the names of the partners and the interest held by each, and shall make out a monthly balance sheet, showing the names of the creditors and the amounts due to each, and file the same among the papers of the partnership; and such balance sheet and all the books of the partnership shall be open to the inspection of creditors at all reasonable hours.

76. Every partner in such partnership shall be at liberty to sell or dispose of his interest therein, or of any part thereof, to any other free miner.

77. No member of such partnership after a bill of sale conveying his interest has been duly recorded, or after he has served a notice of abandonment of his interest on the foreman, and left a copy thereof with the Mining Recorder, shall be liable for any indebtedness of the partnership incurred thereafter.

78. No such partnership shall declare any dividend until all its liabilities have been paid.

79. Every such partnership shall appoint a foreman or manager, who shall represent the partnership, who shall sue

and be sued in the name of the partnership, and his contracts in relation to the business of the partnership shall be deemed to be the contracts of the partnership.

80. No such partnership shall be liable for any other indebtedness than that contracted by its foreman or manager, or by its agent duly authorized in writing.

81. Should any such partnership fail to comply with any of the provisions of this Act relating exclusively to "limited liability" partnerships, such partnerships shall, from the date of such failure, cease to be a "limited liability" partnership.

PLACER MINING.

R. S. B. C., c. 136, s. 57. All mining partnerships shall be governed by the provisions hereof, unless they shall have other and written articles of partnership.

58. A mining partnership shall, unless otherwise agreed upon, be deemed to be a yearly partnership, renewable from year to year by tacit consent.

59. The business of such partnership shall be mining and such other matters as pertain solely thereto.

60. Mining partnerships can locate and record in the partnership name a placer claim for each partner who is a free miner. Such partnership claims may be located and recorded as a set of claims, and each such claim shall be staked as an ordinary placer claim. One stake on each such claim shall be marked as an initial stake, by writing thereon the words "Initial post." It shall not be requisite to post more than one location notice on each set of claims, which notice shall be on the first initial post.

61. A set of claims may be recorded in one record. The name of every partner, and the number of every partner's free miner's certificate, shall be on the record of every set of claims. The partnership name shall appear on every such record, and all claims so taken up shall be the property of the partnership.

62. A partner in any mining partnership or his agent authorized in writing shall at any meeting thereof be entitled to vote upon any interest or fraction of an interest which he may

hold therein; but the result of the votes given shall be determined by the number of the full interests voted upon and not by the number of partners voting at such meeting.

63. A majority of such votes may decide when, how long, and in what manner to work the partnership claim or set of claims, the number of men to be employed, which number shall not be less than one man to each claim, and the extent and manner of levying the assessments to defray the expenses incurred by the partnership. Such majority may also choose a foreman or manager, who shall represent the partnership, and sue and be sued in the name of the partnership for assessments and otherwise; and he shall have power to bind them by his contracts. Every partner or his duly authorized agent shall be entitled to represent his interest in the partnership property by work and labour so long as such work and labour be satisfactory to the foreman or manager. In the event of such partner or agent being discharged by the foreman or manager, the Court having jurisdiction in mining disputes may, if requested, summon the foreman or manager before it, and, upon hearing the facts, make such order as it shall deem just.

64. All assessments shall be payable within five days after being made.

65. Any partner making default in payment after receiving a notice certifying the amount due by him shall, if such amount be correct, be personally liable therefor to the partnership, and his interest in the partnership property may be sold by the partnership for the payment of the debt, and any further assessment which may have accrued thereon up to the day of sale, together with all costs and charges occasioned by such default; and if the proceeds of the sale be insufficient to pay off the several sums mentioned, the Court having jurisdiction in mining disputes, upon being applied to, shall issue an order directed to the Sheriff to seize and sell any other personal property of the debtor. Notices of sale shall in either of the above cases be conspicuously posted ten clear days prior to the day of sale in the vicinity of such mining or other property, and on the Court House or Mining Recorder's office

nearest thereto. But if such partner be absent from the district, such notices shall be posted as aforesaid thirty clear days before the day of sale, and a copy of such notice shall be published in some newspaper circulating in the district wherein such mining or other property is situate for the same period. Such sale shall be by public auction to the highest bidder. The purchaser shall be entitled to possession of the property sold, and to a bill of sale therefor signed by the auctioneer; such bill of sale shall confer such title upon the purchaser as the owner had.

66. After a notice of abadonment in writing shall have been served on the foreman or manager of a partnership by any member thereof, and duly recorded, such member shall not be liable for any debts or other liabilities of the partnership incurred after service and record of such notice, and no member shall be deemed to have abandoned an interest until service and record of such notice.

67. Any partner shall be entitled to sell or contract for the sale of his interest in the partnership property, but such interest shall continue liable for all the debts of the partnership.

68. No partner shall after a bill of sale conveying his interest has been recorded be liable for any indebtedness of the partnership incurred thereafter.

LIMITED LIABILITY.

69. Any mining partnership composed of two or more free miners, and being free from all debts in respect of the partnership property, may limit the liability of its members upon complying with the requirements following, that is to say:

Upon filing with the Mining Recorder a declaratory statement containing the name of the partnership, the location and size of every partnership claim, and the particular interest of each partner; and also placing upon a conspicuous part of every such claim or set of claims in large letters the name of the partnership followed by the words "Limited Liability."

70. The words "Limited Liability" shall thereupon become part of the partnership name.

71. After such conditions shall have been complied with no member of such partnership shall be liable for any indebtedness incurred thereafter beyond an amount proportioned to his interest in the partnership.

72. Every such partnership shall keep a correct account of its assets and liabilities, together with the names of the partners and the interest held by each, and shall make out a monthly balance sheet, showing the names of the creditors and the amounts due to each, and file the same among the papers of the partnership; and such balance sheet and all the books of the partnership shall be open to the inspection of creditors at all reasonable hours.

73. Every partner in such partnership shall be at liberty to sell or dispose of his interest therein, or of any part thereof to any other free miner; but such partner shall be liable for the indebtedness on the said interest in proportion to his interest in the partnership.

74. No member of such partnership after a bill of sale conveying his interest has been duly recorded, or after he has served a notice of abandonment of his interest on the foreman, and left a copy thereof with the Mining Recorder, shall be liable for any indebtedness of the partnership incurred thereafter.

75. No such partnership shall declare any dividend until all its liabilities have been paid.

76. Every such partnership shall appoint a foreman or manager, who shall represent the partnership, and who shall sue and be sued in the name of the partnership; and his contracts in relation to the business of the partnership shall be deemed to be the contracts of the partnership.

77. No such partnership shall be liable for any other indebtedness than that contracted by its foreman or manager, or by its agent duly authorized in writing.

Mining Partner concealing Gold or Silver.

By sec. 312 of the Criminal Code any person who conceals gold or silver with intent to defraud his co-partner in any mining claim is guilty of theft.

PART II.

LIMITED PARTNERSHIPS.

Limited partnerships are unrecognized by the law of England. They are derived from the French law. Pothier thus defines them:—"Partnership *en Commandite* (or limited partnership) is a partnership which a merchant contracts with another individual for a business which will be carried on in the name of the merchant alone, and to which the other party to the contract contributes only a certain sum of money to serve as part of the partnership capital, upon condition that he will have a certain share in the profits, if there are any; and that he will bear, on the other side, a certain share of the losses, but in any event only to the extent of his contribution."

IV. Pothier (Bugnet), p. 260.

Limited partnerships were introduced into Upper Canada by the Statute 12 Vic., ch. 75 (1849), and into Lower Canada by the Statute 18 Vic., ch. 14 (1855), which made the former Act applicable to the whole.

These Statutes were consolidated and re-enacted in 1859 by chapter 60 of the Consolidated Statutes of Canada, which is still in force, though obsolete. (Unrepealed Statutes of Canada, 1886, p. 108.)

In 1868 the Province of Quebec incorporated the provisions of this Statute in its Civil Code; and the other Provinces at different dates in conformity with their right to legislate respecting property and civil rights have enacted provincial statutes more or less in conformity with it also. The Ontario, Quebec, Manitoba and British Columbia Acts are practically identical. New Brunswick and Nova Scotia Acts, while the same in effect, differ greatly in detail. It is proposed, therefore, to treat of the Ontario, Manitoba, Quebec, British Columbia and North-West Territories Acts together, and set out the provisions of the New Brunswick and Nova Scotia Acts separately.

CHAPTER I.

LIMITED PARTNERSHIPS IN PROVINCES OTHER THAN NEW
BRUNSWICK AND NOVA SCOTIA.

Sec. 1.—Formation.

- (1) Conditions under which permitted.
- (2) General and Special Partners.
- (3) Certificate.
 - (a) Contents of Form.
 - (b) Rules as to Filing.

Sec. 2.—Renewal or Alteration.

- (1) Renewal to be Certified.
- (2) Alteration to be deemed a Dissolution.

Sec. 3.—Rules as to Conduct of Business.

- (1) Name of Partnership.
- (2) Actions By and Against.
- (3) Rights and Liabilities of General and Special Partners.
- (4) No Premature Dissolution shall take place till Notice Filed.

The Ontario Act is contained in R. S. O., cap. 151. The British Columbia Act is contained in R. S. B. C., c. 150, which Act also deals with partnership generally, and Registration of Partnerships. The Manitoba Act is contained in R. S. M., c. 114, which Act also contains the provisions as to Registration of Partnerships. The Quebec Act is to be found in articles 1871 and following of The Civil Code, and the North-West Territories Act is contained in Ord., 1899, c. 7.

The Ontario sections (which are designated by the large figures) are given in full, and the details in which the provisions of British Columbia, Manitoba, Quebec and the North-West Territories differ from those of Ontario are noted below each of the Ontario sections.

SEC. I.—FORMATION OF LIMITED PARTNERSHIPS.

(1) *Conditions under which Permitted.*

1. Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business within the Province or Ontario, may be formed by two or more persons upon the terms, with the rights and powers and subject to the conditions and liabilities hereinafter mentioned, but the provisions of this Act shall not be construed to authorize any such partnership for the purpose of banking, or the construction or working of railways, or making insurance. R. S. O., c. 151, s. 1.

BRITISH COLUMBIA.

The British Columbia Act., R. S. B. C., c. 150, s. 47, corresponds.

MANITOBA.

The Manitoba section R. S. M., c. 114, s. 16, corresponds with the difference noted below.

The Manitoba Act is confined to mercantile, mechanical or manufacturing business, the words "or other business" being omitted, and the last clause reads, "but no such partnership shall be formed for the purpose of banking or effecting insurance," instead of as in the Ontario Act.

North-West Territories Ord., 1899, c. 7, s. 47, corresponds.

QUEBEC.

C. C. 1871 reads as follows:—"Partnerships en Commandite or limited partnerships for the transaction of any mercantile, mechanical or manufacturing business other than the business of banking and insurance, may be formed under the Statute entitled "An Act respecting Limited Partnerships." This Act is Chap. 60 of the Consolidated Statutes of Canada, above referred to. (Unrepealed Statutes of Canada, p. 108.)

(2) *General and Special Partners.*

2. Such partnerships may consist of one or more persons, who shall be called general partners, and of one or more per-

sons, who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. R. S. O., c. 151, s. 2.

BRITISH COLUMBIA.

The British Columbia section R. S. B. C., c. 150, s. 48, corresponds.

MANITOBA.

The Manitoba section R. S. M., c. 114, s. 17, corresponds. North-West Territories Ord., 1899, c. 7, s. 48.

The payment may not be by Bills of Exchange; it must be actual cash.

Whittemore v. Macdonell, 6 U. C. Q. B., p. 547.

Watt v. Taft, 16 U. C. Q. B., p. 234.

Benedict v. Van Allen, 17 U. C. Q. B., p. 234.

Patterson v. Holland, 7 Gr. 1 (Ont.).

QUEBEC.

C. C. 1872 corresponds to section 2 of the Ontario Act. The payment must be made in cash.

Davidson v. Frechette, M. L. R., 51 S. C., 282.

C. R., Eaves v. Freman, R. J., 5 C. S., 305.

Allard v. Ricard, R. J., 3 C. S., 427.

Emerson v. Tourville, R. J., 4 C. S., 140; also post p. 136.

3. General partners shall be jointly and severally responsible as general partners are by law, but special partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital. R. S. O., c. 151, s. 3.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 49, corresponds.

MANITOBA.

The Manitoba Section, R. S. M., c. 114, s. 18, corresponds.

"General partners shall be jointly and severally responsible as general partners are by law."

As we have seen, p. 44, general partners are not jointly and severally liable by law except in the case of torts. Possibly this section was passed under a misconception of the Common Law. The British Columbia Act omits these words, but has the remaining part of the section. The Nova Scotia Act (sec. 32), see p. 154, leaves out the words "jointly and severally," and merely provides that general partners shall be responsible as "general partners are now." The New Brunswick and Manitoba Acts have the same provision in this respect as the Ontario Act.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 49, is substantially the same.

The question as to whether partnership liability was joint or joint and several, was discussed in the Ontario Courts as lately as 1893. *Gildersleeve v. Balfour*, 15 Pr. R., 293.

QUEBEC.

C. C. 1873 corresponds to section 3 of the Ontario Act.

The general partners are jointly and severally liable and responsible in the same way as ordinary partners under commercial partnerships are, in virtue of C. C. 1865 (ante pp. 29, 57, 160).

Childs v. Thibault, R. J., 4 C. S., 442, also R. J., C. S., 210.

A limited partner can be sued for a debt of the partnership to the extent of his contribution not yet paid.

Williams v. Beauchemin, in L. R., 15, c. 455.

4. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same. R. S. O., c. 151, s. 4.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 50, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 19, corresponds.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 50, corresponds.

QUEBEC.

C. C. 1874 corresponds to section 4 of the Ontario Act.

(3) *Certificate.*

(a) *Contents and Form of.*

5. The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:—

(1.) The name or firm under which the partnership is to be conducted;

(2) The general nature of the business intended to be transacted;

(3) The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their usual places of residence;

(4) The amount of capital stock which each special partner has contributed;

(5.) The period at which the partnership is to commence, and the period at which it is to terminate. R. S. O., c. 151, s. 5.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 51, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 20, corresponds.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 51, is substantially the same.

QUEBEC.

C. C. 1875 corresponds to section 5 of the Ontario Act.

6. The certificate shall be in the words or to the effect of the form given in the schedule to this Act, and shall be signed by the several persons forming the partnership before a notary public, who shall duly certify the same. R. S. O., c. 151, s. 6.

For Form, see Appendix.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 52, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 21, is the same, except that the form is given in the body of the Act.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 52, corresponds.

QUEBEC.

In Quebec there is no corresponding section.

(b) Rules as to Filing.

7. The certificate so signed and certified shall be filed in the office of the Clerk of the County Court of the County in which the principal place of business of the partnership is situate, and shall be recorded by him at full length in a book to be kept for that purpose and open to public inspection. R. S. O., c. 151, s. 7.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 53, is the same, except that the certificate is to be filed with the Registrar of the County Court instead of with the Clerk of the County Court, and sub-section 1 provides that the Registrar shall receive \$2.00 from the person so filing.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 22, provides that the certificate so signed and certified shall be filed in the proper office of the Judicial District in which the principal business of the partnership is or is to be situated, and when such principal business is, or is not to be situate in a Land Titles District, then also in the office of the Registrar of the Registration District in which such principal business is, or is to be situated.

R. S. M., c. 114, s. 23. Such certificate shall be recorded in a book to be kept for that purpose in each such office which shall be open for public inspection.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 53. Certificate to be filed with clerk or deputy clerk of the Supreme Court.

Effect of filing as notice to third persons discussed, *Maclean v. Clark*, 20 App. R. 660 (Ont.).

QUEBEC.

In Quebec, the notice must be filed in the office of the Prothonotary of the District, and also of the Registrar of the County in which the principal place of business of the partnership is situated; and it must be recorded by him at large in a book to be kept for that purpose and open to public inspection. (R. S. Q., 564I.)

8. For filing and recording each such certificate the Clerk shall be entitled to receive the sum of twenty-five cents, and shall also be entitled to receive from every person searching in the book where such certificate is so recorded, the sum of ten cents for each such search. R. S. O., c. 151, s. 8.

Neither the British Columbia nor Manitoba Acts contain this section.

North-West Territories Ord., 1899, c. 7, s. 54, corresponds.

QUEBEC.

In Quebec, the fee for recording and filing is fifty cents. (R. S. Q., 5642.)

9. No such partnership shall be deemed to have been formed until a certificate has been made, certified, filed and recorded, as above directed; and if any false statement is made in such certificate, all the persons interested in the partnership shall be liable for all the engagements thereof as general partners. R. S. O., c. 151, s. 9.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 54, contains the further provision that the certificate shall be published in the British Columbia Gazette.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 24, corresponds. When the certificate stated that one of the special partners had contributed a certain amount of stock, and it transpired that this was contributed by Bills of Exchange and not in actual cash, as required by sec. 2, this was held to be a false statement such as would render all the special partners liable as general partners.

Whittemore v. Macdonell, *supra*.

Watts v. Taft, 16 U. C. Q. B. 256.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 55, corresponds.

QUEBEC.

C. C. 1876 and 1877 correspond to section 9 of the Ontario Act.

Where the \$15,000 originally put into a firm by a special partner had become impaired and was reduced to less than \$9,000 at the time a new firm was formed, the declaration then made that the capital put in by the special partner was \$15,000, was a false statement and entailed upon the special partner the liability of an ordinary partner. (Q. B., Commercial Mutual Building Society and Sutherland, M. L. R., 4 Q. B. 52.)

So, too, the declaration contained a "false statement" under the following circumstances. In the certificate it was stated that T., one of the defendants, had contributed the sum of \$10,000 as a special partner. The facts were that the other defendants (who had previously carried on the business under the same firm name) were at the date of the registration of the certificate indebted to T. in the sum of \$8,000, previously advanced by T., and used in the business, which debt was set off against the \$10,000, and the balance of \$2,000 was subsequently paid and settled by T. in cash and by note. *Emerson v. Tourville*, R. J., 4 S. C., 140.

Even though the amount be contributed by the special partner shortly after the registration of the certificate, it is

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nevertheless a "false statement" under Article 1877. The certificate must also state the date on which the partnership is to terminate, in order to be complete. *Davidson v. Frechette*, M. L. R., 5 S. C., 282.

SEC. 2.—RENEWAL OR ALTERATION OF LIMITED PARTNERSHIPS.

(1) *Renewal to be Certified.*

10. Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, filed, and recorded, in the manner herein required for its original formation; and every partnership otherwise renewed or continued shall be deemed a general partnership. R. S. O., c. 151, s. 10.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 55, contains the additional provisions that the certificate shall be advertised, and also that the Registrar shall receive a fee of fifty cents for every such renewal or continuance.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 25, is somewhat different. It provides that:—

"Every removal from the place originally fixed for the location of the business, and every continuance beyond the time fixed for the duration of the limited partnership shall be certified, filed and recorded in the manner herein required for its original formation, and every partnership otherwise renewed or continued shall be deemed a general partnership.

"Provided that on the renewal of any such partnership the interest in the stock assets and debts of any limited portion as the same may be found to be, or such portion as shall be agreed to remain in the partnership as part of the assets thereof, shall be held and taken to have the same effect as a cash payment under the seventeenth section of this Act."

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 56, corresponds.

QUEBEC.

C. C. 1878 corresponds to section 10 of the Ontario Act.

(2) *Alteration to be deemed a Dissolution.*

11. Every alteration made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made, shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the next preceding section. R. S. O., c. 151, s. 11.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 56, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 25, is the same, except the concluding words, which read, "unless renewed as a partnership de novo, according to the provisions of the next preceding section," instead of as in the Ontario Act.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 57, corresponds.

QUEBEC.

C. C. 1879 corresponds to section 11, with the exception that it restricts the alteration to the names of any of the *general* partners. The codifiers thought that it was not the intention of the legislators of chapter 60 of the Consolidated Statutes (ante p. 128), to apply this rule to a change in the name of any *limited* partner, for such was not the case under the old law. They did not consider that there was any reason to so change the law, inasmuch as the public had no interest in the change of the limited partners, their responsibilities being limited to the amount of their contributions.

SEC. 3.—RULES AS TO CONDUCT OF BUSINESS.

(1) *Name of Partnership.*

12. The business of the partnership shall be conducted under a name or firm in which the names of the general partners, or some, or one of them only shall be used; and if the name of a special partner is used, in such firm with his privity, he shall be deemed a general partner. R. S. O., c. 151, s. 12.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 57, is substantially the same, though the wording is slightly different.

MANITOBA.

The Manitoba section, R. S. M., c. 114 s. 27, corresponds.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 58, is substantially the same.

QUEBEC.

C. C. 1880 corresponds to section 12 of the Ontario Act.

A limited partnership can employ the word "Company" in its name without making the limited partner liable. Commercial Mutual Building Society v. Fulton, 15 R. L. 160. The names of one or more of the general partners must be used. Commercial Mutual Building Society v. Sutherland, M. L. R., 4 Q. B, 52.

(2) *Actions By and Against.*

13. Actions in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partner. R. S. O., c. 151, s. 13.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 58, is the same.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 28, reads actions or suits, etc.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 59, corresponds.

QUEBEC.

C. C. 1881 corresponds to section 13 of the Ontario Act.

(3) *Rights and Liabilities of General and Special Partners.*

14. No part of the sum which a special partner has contributed to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits or otherwise at any time during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of the capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profits. R. S. O., c. 151, s. 14.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 59, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 29, corresponds.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 60, is substantially the same.

QUEBEC.

C. C. 1882 corresponds to section 14 of the Ontario Act.

15. If it appears that by the payment of interest or profits to a special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the deficient capital with interest. R. S. O., c. 151, s. 15.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 60, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 30, reads, "shall be bound to restore the same, or so much thereof as shall be necessary," etc.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 61, corresponds.

QUEBEC.

C. C. 1883 corresponds to section 15 of the Ontario Act.

16. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise; and if he interferes contrary to these provisions he shall be deemed a general partner. R. S. O., c. 151, s. 16.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 61, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 31, corresponds.

For acts which will render a special partner liable as a general partner, see *Bowes v. Holland*, 14 U. C. Q. B., 36; *Davies v. Bowes*, 15 U. C. Q. B., 280; *Whittemore v. Macdonell*, 6 U. C. C. P., 547.

It would seem that when a special partner has become a general partner under this section, he is so for all purposes as regards the relations between himself and the other partners, and not merely in respect to his liability to creditors. *Bowes v. Holland*, supra; *Patterson v. Holland*, 1 Gr. 1 (Ont.).

And where a special partner has once rendered himself liable as a general partner by interference he continues so liable, and is not relieved after he has ceased to intermeddle. *Hutchison v. Bowes*, 15 U. C. Q. B. 156.

If a special partner represent to a creditor that he is a partner, he will be liable as a general partner. *Watt v. Taft*, *supra*. It is not necessary for plaintiff to shew that the limited partnership was regularly formed in order to charge a special partner as a general partner on account of intermeddling.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 62, corresponds.

QUEBEC.

C. C. 1884 corresponds to section 16 of the Ontario Act.

17. The general partners shall be liable to account to each other and to the special partners for their management of the concern, in like manner as other partners. R. S. O., c. 151, s. 17.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 62, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 32, reads, "shall be liable to account, both at law and in equity, etc.," and the words "are liable" are added at the end of the section.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 63, corresponds.

QUEBEC.

C. C. 1885 corresponds to section 17 of the Ontario Act.

18. In case of the insolvency or bankruptcy of the partnership, no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied. R. S. O., c. 151, s. 18.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 63, corresponds.

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 33, corresponds.

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 64, is substantially the same.

QUEBEC.

C. C. 1886 corresponds to section 18 of the Ontario Act.

(4) *No Premature Dissolution till Notice Filed.*

19. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal until a notice of such dissolution has been filed in the office in which the original certificate was recorded, and has been published once in each week for three weeks in a newspaper published in the county or district where the partnership has its principal place of business, and for the same time in the Ontario Gazette. R. S. O., c. 151, s. 19.

BRITISH COLUMBIA.

The British Columbia section, R. S. B. C., c. 150, s. 64, contains the words, "if there be a newspaper published there, and for the same time in the British Columbia Gazette."

The British Columbia Act has the following additional section 65.—"Save as hereinbefore provided for in this part, limited partnerships shall be governed by the provisions so far as applicable to part 1 of this Act."

MANITOBA.

The Manitoba section, R. S. M., c. 114, s. 34 reads:—"No such dissolution of such 'limited' partnership, etc.," and provides at the end of the section "that the notice shall be published once in each week for three weeks in a newspaper published in the municipality where the partnership has its principal place of business, or the nearest place thereto wherein a newspaper is published, and once in the Manitoba Gazette."

NORTH-WEST TERRITORIES.

Ord., 1899, c. 7, s. 65, is substantially the same.

The North-West Territories Act has also the following section 66:—"The provisions of the sections of this ordinance numbered from 2 to 46, both inclusive, shall, as regards limited partnerships, be subject to the special provisions herein contained regarding such partnerships."

QUEBEC.

C. C. 1887 corresponds to section 19 of the Ontario Act but, as to the publication of the dissolution, refers to the original section 18 in chapter 60, C. S. C., which, respecting such publication, reads:—"And has been published once in every week for three weeks, in a newspaper published in the County or District where the partnership has its principal place of business, and for the same time in the Canada Gazette." It is presumable that publication in the Quebec Gazette would suffice, but there is no authority on the point.

CHAPTER II.

THE NEW BRUNSWICK ACT RELATING TO LIMITED PARTNERSHIPS.

Sec. 1. Formation and Constitution.

(1) How constituted.

(2) Certificate.

(a) Contents and Form of.

(b) Rules as to Filing and Publishing.

Sec. 2. Continuance and Termination of.

Sec. 3. Duties and Liabilities of General and Special Partners in Conducting the Business.

(a) Name of the Partnership.

(b) Withdrawal of Capital by Special Partner.

(c) Rights of Special Partner in Management of Business.

(d) Actions By and Against.

(e) Accounting inter se.

(f) No Premature Dissolution.

(g) Alteration to be Deemed a Dissolution.

(h) Rights and Liabilities where no Provision in Act.

The New Brunswick Act respecting Limited Partnerships is to be found in 52 Vict. (N. B.), cap. 4, which repeals 45 Vict., cap. 24, except sect. 22, and except as to partnerships formed under the repealed Act.

Section 22 is simply a section repealing former provisions relating to Limited Partnerships.

This Statute came into force on 17th April, 1889.

SEC. I—FORMATION AND CONSTITUTION.

(1) *How Constituted.*

1. Limited partnerships for the transaction of all business may be formed by two or more persons.

2. Such partnerships may consist of one or more general partners, who shall be jointly and severally responsible as partners now are by law, and also of any other person or persons who shall contribute to the common stock a specific sum in actual cash payments as capital, who shall be called special partners, and shall not be personally liable for any debts of the partnership except in the cases hereafter mentioned.

Cp. Ont. Act, secs. 1, 2 and 3, and notes, pp. 130-1.

(2) *Certificate.*

(a) *Contents and Form of.*

3. The persons forming such partnership shall make and severally sign a certificate which shall contain the name or firm of the partnership, the names and respective places of residence of the general and special partners, distinguishing the general from the special, the amount of capital each special partner has contributed, the general nature of the business to be transacted, and the time when the partnership is to commence and to terminate.

Op. Ont. Act, sec. 5, p. 133.

(b) *Rules as to Filing and Publishing.*

4. No such partnerships shall be deemed to have been formed until a certificate made as aforesaid shall be acknowledged by the partners, if such acknowledgment be taken within the Province, before any of the officials or persons provided by section 6 of chapter 74 of the Consolidated Statutes, for the taking of acknowledgment or proof within the Province of a conveyance, and if taken without the Province, then before any of the officials or persons provided by the said section for the taking of acknowledgment or proof without the Province of a conveyance, and in either case certified or authenticated in the same manner and with the same formality in all respects as though such acknowledgment were the taking of the proof or acknowledgment of a conveyance, and registered in the office of the Registrar of Deeds of the County of

their principal place of business, in a book to be kept for that purpose, open to the public inspection; and if the partnership shall have places of business situated in different Counties, a copy thereof, certified by the Registrar of Deeds, where registered, shall also be registered in such Counties in a similar book, and if any false statement shall be made in such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof. That for registering such certificate and indexing the same, the said Registrar shall receive the sum of fifty cents, and for every certified copy thereof the sum of forty cents, and a certified copy of such certificate under the hand of the Registrar of Deeds shall be evidence in all courts of law and equity. That such certificate shall be in the form following, with such variation as each case may require:

"The undersigned, desirous of forming a limited partnership under the laws of the Province of New Brunswick, hereby certify—

(1) That the name or firm under which such partnership is to be conducted is (here insert the firm name);

(2) That the general nature of the business intended to be transacted by such partnerships is (here designate the general nature of the business, as the buying and selling, on commission or otherwise, at wholesale and retail, of such articles as are usually bought and sold by dealers in such wares and goods);

(3) That the names of all the general and special partners interested in said partnership are as follows:—A. B., who resides at _____, and C. D., who resides at _____, are the general partners, and E. F., who resides at _____, and G. H., who resides at _____, are the special partners;

(4) That the said E. F., has contributed the sum of _____ dollars, and the said G. H. the sum of _____ dollars, as capital to the common stock;

(5) That the period at which the said partnership is to commence is the _____ day of _____ A. D., 18____ (insert the date, which should be some day after that

on which the certificate is to be filed and recorded), and the period at which the said partnership is to terminate is the day of , A.D., 18 .

Dated this day of , A. D., 18 .

(Signatures.)"

Cp. Ont. Act, sects. 5, 6, 7, 8 and 9, and notes, pp. 133-6.

5. The partners shall for three months immediately following such registry publish a copy of the certificate above mentioned in a newspaper published in the city or county where their principal place of business is situated, and if there shall be no such newspaper, such publication shall be made in the Royal Gazette; if such publication be not so made the partnership shall be deemed general.

6. That an affidavit of the publication of such copy of such certificate sworn to by the printer or proprietor of the newspaper in which the same shall be published, before a Justice of the Peace, and filed with the said Registrar of Deeds, shall be evidence of the facts therein contained, and a copy certified by such Registrar of every certificate and affidavit filed under this Act shall be evidence thereof in any court of law or equity. That such affidavit shall be in the form or to the effect following:—

City and County
or Parish or City of } S. S.
Province of New Brunswick.

A.B., of , being duly sworn, says: I am the printer (or proprietor) of the newspaper, known as the , published daily (or weekly) at (designate place of its publication), and that the advertisement or notice, a copy whereof is hereto annexed, was published in the said newspaper for three months successively, that is to say, in the several issues of the said newspaper from the day of last past, to the day of instant (or last past), both inclusive.

Sworn to before me at
this day of , A.D., 18 .
A. B. (signature).

C. D.,
One of Her Majesty's Justices of the Peace for the City and County of .

SEC. 2.—CONTINUANCE AND TERMINATION OF.

7. Every such partnership shall be held to continue on the original terms until the period at which the same is provided for by the original certificate, or the continuing certificate hereafter mentioned, to determine, shall have elapsed, or until a certificate by all the partners shall be signed, acknowledged, registered and published as in the first instance declaring the withdrawal of any one or more partners from the concern, in which case, and when such publication shall have been completed, such one or more partners shall be taken and deemed to be withdrawn from the concern and released from further liability. If before the period for which the partnership has been established, or to which the same has been continued as hereafter provided shall have elapsed, it shall be decided by the partners then constituting the partnership to continue or further continue the same, such partners may so do by signing, acknowledging, registering and publishing a continuing certificate as in the first instance, in form following, or to that effect:

"The undersigned, constituting a limited partnership under the laws of New Brunswick under the name (here insert name as in the original certificate) which will expire on the day of , A.D., 18 (insert the date), continue the said partnership until the day of A.D., 18 . (Insert the date to which the partnership is to be continued.)

Dated this day of . A.D., 18 (Insert the date.)"

And thereupon in case such publication shall be completed before the expiration of the original or further partnership, the same shall continue on the original terms, and be deemed a continuation of the original partnership until the expiration of the date mentioned in the continuing certificate, and any partnership may be further continued as aforesaid as often as the partners may desire, and all provisions of this Act shall, so far as applicable, apply to all continuations of an original limited partnership in like manner as to such original partnership.

Cp. Ont. Act, secs. 10 and 19, pp. 137-143.

SEC. 3.—DUTIES AND LIABILITIES OF GENERAL AND
SPECIAL PARTNERS IN CONDUCTING THE BUSINESS.

(a) *Name of the Partnership.*

8. The business of the partnership shall be conducted by the general partner or partners under such firm name as he or they shall adopt, and if the name of any special partner shall be used as such firm name, or a part of the same, with his consent and privity, or if he shall personally make any contract respecting the concerns of the partnership with any person except the general partner or partners, or except as hereinafter provided, he shall be deemed and treated as a general partner, but to use the name of any special partner with the addition thereto "special partner" or "limited partner" or to that effect, shall not be considered as using such name as such firm name, or a part of the same.

Cp. Ont. Act., sec. 12.

(b) *Withdrawal of Capital by Special Partner.*

9. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership, but any partner may annually or semi-annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits.

Cp. Ont. Act, sect. 14.

10. If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital with interest.

Cp. Ont. Act, sect. 15, p. 140.

(c) *Rights of Special Partner in Management of Business.*

11. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management; he may also loan money to and advance and pay money for the partnership, and may take and hold the notes, drafts, acceptances and bonds, of or belonging to the partnership as security for the repayment of such moneys and interest, and may use and lend his name and credit as security for the partnership in any business thereof, and shall have the same rights and remedies in these respects as any other creditors might have; he may also negotiate sales, purchases and other business for the partnership, but no business so negotiated shall be binding upon the partnership until approved by a general partner, or a majority of the general partners. Excepting as herein mentioned, he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise; if he shall interfere contrary to these provisions he shall be deemed a general partner.

Cp. Ont. Act, sect. 16, p. 141.

12. It shall be lawful for a special partner in any limited partnership to lease to the general partner or partners any lands, tenements or other property, for the purposes of the partnership, at such rents and upon such terms as may be agreed upon between them.

(d) *Actions By and Against.*

13. All suits respecting the business of such partnership shall be prosecuted by or against the general partner or partners only, except in those cases where any special partner or partners by the provisions of this Act shall be deemed general.

Cp. Ont. Act, sect. 13, p. 139.

(e) *Accounting inter se.*

14. The general partners shall be liable to account to each other, and to the special partners, for their management of

the concern, both at law and in equity, as other partners now are by law.

Cp. Ont. Act, sect. 17, p. 142.

15. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, in addition to any liability under the Dominion or Provincial law or statute.

16. In case of the insolvency or bankruptcy of the partnership, no special partner shall, except for claims contracted pursuant to section eleven of this Act, under any circumstances be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.

Cp. Ont. Act, sect. 18, p. 142.

(f) No Premature Dissolution.

17. No dissolution of such partnership shall take place except by the elapsing of the time limited for its existence, or by operation of law, or as in this Act otherwise provided, unless a notice thereof shall be registered in the same manner as the original certificate, and unless such notice shall be published for six successive weeks in some newspaper of the city or county where such certificate or a copy thereof was published; and if there be no such newspaper, then in the Royal Gazette, according to the provisions of this Act, in which case and when said publication is completed the said partnership shall be taken and deemed to be dissolved.

Cp. Ont. Act, sect. 19, p. 143.

(g) Alteration to be Deemed a Dissolution.

18. Every alteration which shall be made in the name of the general partners, in the nature of the business, or in the capital or shares thereof contributed, held or owned, or to be contributed, held or owned by any of the special partners, and the death of any partner, whether general or special, shall be deemed a dissolution of partnership, and notice thereof shall be registered and published by any special partner or his legal representative in the manner provided in the preceding section.

Cp. Ont. Act, sect. 11, p. 138.

(h) *Rights and Liabilities when no Provision in Act.*

19. In all cases not otherwise herein provided for, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

20. The Act 45th Victoria, chapter 24, excepting section 22, is hereby repealed; provided that the said repealed Act shall continue and be of the same effect as if this Act had not been passed as regards any partnership formed under the said repealed Act before the passing of this Act, whether such partnership is still in existence or not.

CHAPTER III.

THE NOVA SCOTIA ACT RELATING TO LIMITED PARTNERSHIPS.

Sec. 1. Formation of.

- (a) How Constituted.
- (b) Certificate.
- (c) Publication of Terms.

Sec. 2. Renewal or Alteration of.

Sec. 3. Rules as to Conduct of Business.

- (a) Name of Partnership.
- (b) Actions By and Against.
- (c) Rights and Liabilities of General and Special Partners.

The Nova Scotia Act is contained in R. S. N. S. (5th series), cap. 83, sections 32 et seq.

SEC. 1.—FORMATION OF.

(a) How Constituted.

32. Two or more persons may enter into and form limited partnerships for the transaction of mercantile, mechanical or manufacturing business, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter prescribed. Nothing herein shall authorize any such partnerships to engage in any banking operation, or to become insurers upon any marine risk, or upon loss by fire, or upon any life. Such partnerships may consist of one or more persons called general partners, who shall be responsible as general partners now are, and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock called special partners. Special partners shall not be liable for the debts of the partnership beyond the fund so contributed by them to the capital, except in

cases hereinafter mentioned. The general partners only shall be authorized to transact the business of the partnership, and bind the same by the signature of the partnership name or otherwise.

Compare Ont. Act, sects. 1, 2, 3 and 4, and note, pp. 130-1-2

(b) *Certificate.*

33. Persons desirous of forming such partnerships shall before the same shall go into operation make and severally sign a certificate containing the name of the firm under which such partnership is to be conducted, the nature of the business to be transacted, the names of all the partners interested therein, distinguishing which are general and which special partners, and their respective places of residence, the amount of capital which each special partner shall have contributed to the common stock, the period at which the partnership is to commence, and at which it will terminate. Such certificate shall be acknowledged by the several persons signing the same before a judge of the Supreme or County Court, or justice of the peace, and such acknowledgment shall be certified in writing on such certificates by the person before whom the same is made. The certificate so acknowledged and certified shall be filed in the office of the Registrar of Deeds of the county or district where the principal place of business of the partnership shall be situated, and shall be recorded by him at large in a book to be kept for that purpose, open to public inspection, and if the partnership shall have places of business situated in different counties or districts a transcript of the certificate and of the acknowledgment thereof duly certified by such Registrar shall be filed and recorded in like manner in the office of the Registrar of every such county or district.

Compare Ontario Act, sections 5, 6 and 7. See pp. 133-4.

34. An affidavit of one or more of the general partners, and also of one or more of the special partners shall also at the same time be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash, and no such partnership shall

be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, and an affidavit filed as above directed, and if any false statement be made in such certificate or affidavit all persons interested in such partnership shall be liable as general partners.

Compare Ont. Act, sect. 9, p. 135.

(c) *Publication of Terms.*

35. The terms of every such partnership, when registered, shall immediately be published at least six weeks in the Royal Gazette and one other newspaper published in Halifax, and by handbills posted up in some public places in the township in which the business of the partnership shall be carried on. If such publication be not so made such partnership shall be deemed general. Affidavits taken before a justice of the publication of such notice by the printers of newspapers who shall have published the same, and by the persons who shall have posted the handbills, may be filed with the registrar with whom the certificate of the partnership shall have been filed, and shall be evidence thereof.

SEC. 2.—RENEWAL OR ALTERATION OF.

36. Every renewal or continuance of any such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general and special partner made and filed, and notice given in the manner herein required for its original formation. Every such partnership otherwise renewed or continued shall be deemed a general partnership.

Compare Ont. Act, sect. 10. See p. 137.

37. Every alteration made in the names of the partners, the nature of the business, or the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, and every such partnership carried on after any alteration shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the foregoing section.

Compare Ont. Act, sect. 11. See p. 138.

SEC. 3.—RULES AS TO CONDUCT OF BUSINESS.

(a) *Name of Partnership.*

38. The business of the partnership shall be conducted under a firm in the names of the general partners, only without the addition of the word Company, or any other general term. And any special partner whose name shall be used in such firm with his privity shall be deemed a general partner.

Compare Ont. Act, sect. 12. See p. 139.

(b) *Actions By and Against.*

39. Actions and suits in relation to the business of the partnership may be brought and conducted by and against the general partners as if there were no special partners.

Compare Ont. Act, sect. 13. See p. 139.

(c) *Rights and Liabilities of General and Special Partners.*

40. No part of the sum contributed by a special partner to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits or otherwise at any time during the continuance of the partnership; but a partner may annually receive lawful interest on the sum so contributed by him, if payment thereof shall not reduce the original capital, and if after the payment of such interest any profit shall remain to be divided, he may also receive his portion of such profit; but if it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall restore the amount necessary to make good his share of capital with interest.

Compare Ont. Act, sect. 14 and 15. See p. 140.

41. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise, and if he shall interfere contrary to these provisions he shall be deemed a

general partner. General partners shall be liable to account to each other, and to the special partners for the management of the concern, as other partners now are.

Compare Ont. Act, sects. 16 and 17 and notes. See pp. 141-2.

42. A partner guilty of any fraud in the affairs of such partnership shall be liable civilly to the party injured to the extent of the damage.

43. Every sale, assignment or transfer of any of the property or effects of such partnership or of a general or special partner made by such partnership, or a general or special partner when insolvent or in contemplation of insolvency, with intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every warrant of attorney executed, and every judgment confessed, lien created or security given by such partnership or general or special partner under the like circumstances, and with the like intent, shall be void as against the creditors of the partnership. A special partner who shall violate any provision of this chapter, or concur in or assent to any such violation by the partnership, or by any individual partner shall be liable as a general partner.

44. In case of the insolvency or bankruptcy of the partnership, no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all other creditors of the partnership are satisfied.

Compare Ont. Act, sect. 18, p. 142.

45. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the Registrar's office in which the original certificate was recorded, and published once in each week for four weeks in the Royal Gazette, and in some other newspaper printed in each of the counties where the partnership may have places of business.

Compare Ont. Act, sect. 19. See p. 143.

PART III.

REGISTRATION OF PARTNERSHIPS.

As the Acts of the majority of the Provinces concerning Registration are very similar, the sections of the Ontario Act, R. S. O., cap. 152, will be set out in full, and the variations in the Acts of the other Provinces, except those of New Brunswick and Quebec, which will be given separately, will be pointed out. In some of the Provinces as is noted below all the statutory provisions as to partnership are contained in the one chapter. In other Provinces the provisions as to limited partnerships and registration of partnerships are contained in the same chapter, while in other Provinces limited partnership and registration of partnership are dealt with in separate chapters.

CHAPTER I.

REGISTRATION OF CO-PARTNERSHIPS IN PROVINCES OTHER THAN NEW BRUNSWICK AND QUEBEC.

Sec. 1.—Declaration of Partnership.

- (a) Who must make.
- (b) Form and Requisites as to Filing.
- (c) New Declaration when Change in Firm.
- (d) Statements in Declaration cannot be Controverted.
- (e) Old Declaration Binding till New Filed.

Sec. 2. Declaration of Dissolution.

Sec. 3. Actions Against Partners when no Declaration Filed.

Sec. 4. Declaration by Sole Trader Using Firm Name.

Sec. 5. Penalty for Non-Compliance.

Sec. 6. Duties of Registrar.

Sec. 7. Additional Sections in the various Provinces.

SEC. 1.—DECLARATION OF PARTNERSHIP.

(a) *Who must Make.*

1. (1) All persons associated in partnership for trading, manufacture or mining purposes, shall cause to be delivered to

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the Registrar of the registry division in which they carry on or intend to carry on business, a declaration in writing signed by the several members of such co-partnership.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 66 (1), reads: "All persons now associated in or hereafter entering into a general partnership," and the declaration is to be delivered to "the Registrar of the County Court of the county in which they carry on or intend to carry on business," otherwise it corresponds to the Ontario Act.

MANITOBA.

R. S. M., c. 114, s. 3 (1), reads: "All persons who at the time of the coming into force of this Act, or who hereafter may be associated in partnership for trading, manufacturing or mining purposes in this Province, shall cause to be filed in the proper office for the judicial district in which the principal place of business of the partnership is situate or intended to be situate, a declaration, etc.," as in Ontario Act.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), cap. 45, s. 1 (First Part), corresponds to the above sub-section 1 of the Ontario Act, but the words "in the territories" are inserted in the second line after the words "mining purposes." The declaration is to be filed "in the office of the registration clerk of the registration district for registration of chattel mortgages and other transfers of personal property in the territories."

NOVA SCOTIA.

R. S. N. S. (1884), cap. 83, s. 1 (First Part), corresponds to the above sub-section 1 of the Ontario Act, but the declaration is to be delivered to the "Registrar of Deeds of the County, etc."

1. (2) If, however, any of the said members are absent from the place where they carry on or intend to carry on business at

the time of making the declaration, then the declaration shall be signed by the members present in their own names and also for their absent co-members under their special authority to that effect, and such special authority shall be at the same time filed with the registrar and annexed to the declaration.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 56 (2), corresponds.

MANITOBA.

R. S. M., c. 114, s. 3, corresponds, except that the words "at the time of making the declaration" are before instead of after "are absent from the place where they carry on or intend to carry on business," and the word "provided" is used instead of "if."

NORTH-WEST TERRITORIES.

Con. Ord. (1898), cap. 45, s. 1, the second part of section 1 begins: "Provided, however, that if any of the said members be absent" and the special authority is to be filed with "the said registration clerk," otherwise it is substantially the same as the above Ont. sub-section.

NOVA SCOTIA.

R. S. N. S. (1884), cap. 83, s. 1 (Second Part), is the same as the above sub-section, except that the "registrar" is described as the "registrar of deeds."

The Nova Scotia Act also contains the following section:—

(2) When the persons so associated are resident out of the Province, and are doing business in the Province by an attorney, agent, or other representative, such declaration may be signed by such attorney, agent, or other representative under special authority of the persons so associated, and such special authority shall be annexed to the declaration and filed at the same time with the Registrar of Deeds, and the form of the declaration shall be modified accordingly.

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(b) Form of Declaration and Requisites as to Filing.

2. The declaration shall be in the form or to the effect of Schedule A to this Act, and shall contain the names, surnames, additions and residences of each and every partner, as aforesaid, and the name, style or firm under which they carry on or intend to carry on such business, and shall state also the time during which the partnership has existed, or is to exist, and shall declare that the persons therein named are the only members of such co-partnership.

For Form, see Appendix.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 67, is the same, but refers to Schedule B instead of A, and instead of "the name, style or firm under which they carry on or intend to carry on such business," reads simply "and the firm name."

MANITOBA.

R. S. M., c. 114, s. 5.—"Such declaration shall contain the names, surnames and residences of each and every partner or associate as aforesaid, and the name, style or firm under which they carry on or intend to carry on such business, and shall state also the time during which the partnership has existed or is to exist, also declaring that the persons therein named are the only members of such co-partnership or association."

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 2, begins: "Such declaration shall be in the form A in the schedule to this Ordinance, etc.," substantially as in the Ontario section, except that "associate" and "association" are mentioned as well as "partner" and "co-partnership."

NOVA SCOTIA.

R. S. N. S. (1884), cap. 83, sec. 3, corresponds, but with the following variations. The "said declaration" "Schedule A to

this chapter" and the last three lines read: "and shall state also the time during which the partnership has existed, and declare, etc.," leaving out the words "or is to exist."

3. The declaration shall be filed within six months next after the formation of the partnership.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 68, provides for filing within three months of coming into force of Act, or formation of the firm.

MANITOBA.

(See next section.)

NORTH-WEST TERRITORIES.

(See next Section.)

NOVA SCOTIA.

R. S. N. S. (1884), cap. 83, s. 4: "The said declaration shall be filed within three months, etc."

(c) New Declaration when Change in Partnership.

4. A similar declaration shall in like manner be filed when and so often as any change or alteration takes place in the membership of the partnership, or in the name, style or firm under which they intend to carry on business, or in the place of residence of any member of the firm, and every new declaration shall state the alteration in the partnership.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 69.—"A similar declaration shall in like manner be filed when and so often as any change or alteration takes place in the membership of the firm, or in the firm name, or in the case of any member of the firm ceasing to reside in the Province, and every new declaration shall state the alteration in the partnership."

MANITOBA.

R. S. M., c. 114, s. 6.—“The said declaration, if filed before the coming into force of the Act chaptered seventeen of the Consolidated Statutes, or within the time provided by that Act, shall stand good, and hereafter such declaration shall be filed within six months next after the formation of any partnership, and a similar declaration shall in like manner be filed when and so often as any dissolution of partnership or any change or alteration in the membership of such partnership, or in the name, style or firm under which they intend to carry on business, or in the place of residence of a member of said firm shall take place.”

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 3, provides that “Such declaration shall be filed within six months next after the formation of any such partnership, and a similar declaration shall in like manner be filed when and so often as any change or alteration of partnership takes place in the membership of such partnership, or in the name, style or firm under which they intend to carry on business, or in the place of residence of each member of said firm, and every new declaration shall state the alteration in the partnership.”

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 5, is substantially the same as the Ontario section.

(d) *Statements in Declaration cannot be Controverted.*

5. The allegations made in the declarations aforesaid shall not be controvertible as against any party by any person who has signed the same, nor as against any party not being a member of the partnership by any person who has signed the same, or who was really a member of the partnership therein mentioned at the time the declarations were respectively made.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 71, is the same, except that the word "firm" is used instead of "partnership."

MANITOBA.

R. S. M., c. 114, s. 13, is the same in effect, though the wording is slightly different. "Declaration" the singular is used instead of declarations, and the words "who shall have signed" instead of "who has signed."

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 10, provides that "the allegations made in the declaration aforesaid cannot be controverted by any person who has signed the same, nor can they be controverted as against any party not being a partner by a person who has not signed the same, but who was really a member of the partnership therein mentioned at the time such declaration was made."

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 6, is the same as the Ontario section.

SEC. 2.—DECLARATION OF DISSOLUTION TO BE FILED.

6. Upon the dissolution of a partnership, any or all of the persons who composed the partnership may sign a declaration certifying the dissolution of the partnership: such declaration may be in the form of Schedule B to this Act.

For Forms, see Appendix.

"The section is only permissive." *Bank of Toronto v. Nixon*, 4 A. R. (Ont.), 346, p. 352.

In Ontario this section formerly followed section 7, as it still does in the other Provinces, but by the revision of 1897 these sections were transposed. Query, whether this will have the effect of making this one of the "new declarations as a said," under sec. 7. If so, "no person shall be deemed to have

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ceased to be a partner" till a declaration of dissolution shall have been filed. Section 6, however, says nothing about filing, and the alteration in the Statute is hardly sufficiently explicit to reverse the old rule.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 72, is the same, except that "firm" is used instead of "partnership," and Schedule C is referred to instead of Schedule B.

MANITOBA.

R. S. M., c. 114, does not contain this section.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 12, provides that, "Upon the dissolution of any partnership any or all of the persons who compose such partnership may sign and file a declaration certifying the dissolution of the partnership in the form D in the schedule to this Ordinance."

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 8, is substantially the same as the Ontario section.

(e) Old Declaration Binding till New Filed.

7. Until a new declaration is made and filed by him or by his co-partners or any of them as aforesaid no person who shall have signed the declaration filed shall be deemed to have ceased to be a partner; but nothing herein contained shall exempt from liability any person who, being a partner, fails to declare the same as already provided, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment is recovered against them any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which the judgment was

rendered; nor shall anything in this Act be construed to affect the rights of any partners with regard to each other, except that no declaration as aforesaid shall be controverted by any person who has signed the same.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 71, is the same, except that the word "partners" is used in the second line instead of "co-partners," and the word "signer" is used instead of the words in the Ontario Act. The word "Part," too, is used instead of "Act."

MANITOBA.

There is no corresponding section in the Manitoba Act.

NORTH-WEST TERRITORIES.

Con. Ord. (1898) c. 45, s. 11, corresponds, except that the word "signer" is used instead of the words in the Ont. Act, and there are one or two other slight differences which are not material.

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 7, provides.—"Until a new declaration is made and filed by him or by his co-partners or the attorney, agent or representative of such non-resident co-partner, no such signer or non-resident co-partner, or any of them as aforesaid, shall be deemed to have ceased to be a partner." The section then proceeds substantially as in the Ont. Act, but the following provision is added: "Service of process on the attorney, agent or representative of such non-resident co-partner shall be deemed good service on the said co-partner or co-partners, provided always that the said attorney, agent or representative may apply to the judge of the Court, and obtain time to consult his principal. The attorney, agent or representative of such non-resident co-partner or co-partners shall file with the registrar of deeds his authorization to act as such attorney, agent or representative, verified under oath and certified before a notary public."

See p. 194, *infra*.

SEC. 3.—ACTIONS AGAINST PARTNERS WHEN NO DECLARATION FILED.

8. (1) If any persons are associated as partners for the purpose of trade, and no declaration is filed under this Act with regard to such partnership, then any action which might be brought against all the members of the partnership may also be brought against any one or more of them as carrying on or as having carried on business jointly with others without naming such others in the writ or declaration under the name and style of their said co-partnership firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment is rendered.

BRITISH COLUMBIA

R. S. B. C., c. 150, s. 73 (1), reads: "for trading, manufacturing or mining purposes." "Firm" is used instead of "partnership," "Part" instead of "Act," and after the words "without naming such others in the writ," the British Columbia Act has the words, "or plaint or other process under the name and style of their said partnership or firm," instead of as in the Ontario Act.

MANITOBA.

R. S. M., c. 114, s. 14.—"If any persons shall be or shall have been associated as partners or associates for the purpose of trade or other business, and shall so have carried on trade or other business in the Province," etc., as in Ontario Act, the concluding words being "on which such judgment shall have been recovered," instead of as in the Ontario Act.

NORTH-WEST TERRITORIES.

There is no corresponding section.

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 9 (First Part), is substantially the same as the Ontario section, except that the section applies to "persons associated for the purpose of trade or other business," and not merely to persons associated for the purpose of trade. See p. 194, *infra*.

8. (2) If any such action be founded on any objection or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action; and a judgment rendered against any member of such existing co-partnership for a partnership debt or liability may be executed by process of execution against all and every the partnership stock, property and effects in the same manner and to the same extent as if such judgment had been rendered against such co-partnership.

BRITISH COLUMBIA.

R. S. B. C., c. 150, is the same except that the word "firm" is used instead of "partnership."

MANITOBA.

R. S. M., c. 114 (s. 14, latter part, and sec. 15), beginning "Any judgment recovered under the last preceding section against any member," and ending "had been recovered against all the members of the co-partnership in the usual way," instead of as in the Ontario Act.

NORTH-WEST TERRITORIES.

There is no corresponding section.

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 9 (Second Part), is substantially the same as the above Ontario sub-section.

SEC. 4.—DECLARATION BY SOLE TRADER USING A FIRM NAME.

9. Every person who is engaged in business for trading, manufacturing or mining purposes, and who is not associated in partnership with any other person or persons, but who uses as his business style some name or designation other than his own name, or who in such style uses his own name with the addition of "and Company" or some other word or phrase in-

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dicating a plurality of members in the firm, shall cause to be delivered to the registrar of the registry division in which such person carries on or intends to carry on business, a declaration in writing, signed by such person.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 74, is the same, except that "the declaration is to be delivered to the Registrar of the County Court of the county in which, etc."

MANITOBA.

R. S. M., c. 114, s. 7, has, "who in such business uses his own name," instead of as in the Ontario section, and the declaration is to be filed "in the proper office for the judicial district in which the principal place of such business is situate."

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 4, is the same as the Ontario section, but the words "who is" are omitted in the first line, and the words "who in such business uses his own name" are used instead of as in the Ontario Act. The provision as to filing reads "shall cause to be filed as aforesaid a declaration of the fact in writing signed by such person."

NOVA SCOTIA.

R. S. N. S., c. 83, s. 10, is the same, but the declaration is to be delivered "to the Registrar of Deeds of the county or district in which such person carries on, etc.," and the following provision is added, "And in case such person is resident out of the Province, and carries on business by an attorney, agent or other representative in the Province, such declaration may be made by such agent, attorney or other representative, the declaration shall state in addition with certainty the street and number of his place of business or residence," and see p. 194, *infra*.

10. Such declaration shall contain the name, surname, addition and residence of the person making the same, and the

name, style or firm under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership; and such declaration shall be filed within six months of the time when such style is first used.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 75, the same except that declarations shall be filed "in existing cases within three months of coming into force of Act," or within three months from time when such style is first used.

MANITOBA.

R. S. M., c. 114, reads.—"The declaration last aforesaid," and provides that "the same shall be filed in manner and within the time hereinbefore provided, and subject to the provisions aforesaid." Otherwise it is the same as the Ontario section.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 5, is substantially the same as the Ont. section.

NOVA SCOTIA.

R. S. N. S. (1884), c. 83, s. 11, contains the additional provision, "And in the case of a person residing out of the Province and doing business in the Province by an agent, attorney or other representative, the declaration shall state in addition with certainty the street and number of the place of residence or business," and the provision as to filing is contained in the next section, sec. 12. The declaration is to be filed within three months. Otherwise the provisions are the same as in the above Ontario section.

SEC. 5.—PENALTY FOR NON-COMPLIANCE.

11. Every member of a partnership or other person required to register a declaration under the provisions of this Act who fails to comply with the requirements of this Act, shall

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forfeit the sum of \$100.00, to be recovered before any Court of competent jurisdiction by any person suing as well in his own behalf as on behalf of Her Majesty; and half of such penalty shall belong to the Crown for the uses of the Province, and the other half to the party suing for the same unless the action is brought as it may be on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 76, is the same, except that the word "firm" is used instead of "partnership," and "part" instead of "Act."

MANITOBA.

R. S. M., c. 114, begins, "Each and every member of any partnership or association as aforesaid, and each and every person carrying on business as mentioned in the seventh section of this Act," and then proceeds as in the Ontario Act.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 9, provides that half the penalty shall belong "to the general revenue fund of the "Territories" instead of "to the Crown," otherwise the section is substantially the same as the above.

NOVA SCOTIA.

R. S. N. S., c. 83, s. 13.—"Every member of any partnership, and every person doing business in the manner described in the tenth section of this chapter who fails to comply with the requirements of this chapter, shall forfeit the sum of not less than twenty nor more than one hundred dollars, to be recovered before any Court of competent jurisdiction by any person suing as well in his own behalf as on behalf of Her Majesty, and half of such penalty shall belong to the Crown for the uses of the county or district, and the other half to the party suing for the same, unless the suit is brought as it may be on behalf of the Crown only, in which case the whole

of the penalty shall belong to Her Majesty for the uses aforesaid."

The action may be brought by more than one person and by persons residing in another Province, and two defendants may be joined in the same action for several penalties. *Chaput v. Robert*, 14 A. R. 354.

SEC. 6.—DUTIES OF REGISTRAR.

12. It shall be the duty of the Registrar to enter all declarations made under this Act in the order in which the same are received in a book to be by him kept for that purpose, which shall at all times during office hours be open to the inspection of the public gratuitously; and for registering each such declaration the Registrar shall be entitled to receive from the person filing the same the sum of fifty cents, if it does not contain more than two hundred words, and at the rate of ten cents per hundred words for all above the number of two hundred.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 77, is the same, except that it provides that the book shall be called the Firm Index Book, and the fees are "one dollar" and "twenty cents a word," instead of 50 cents and ten cents.

MANITOBA.

There is no corresponding section.

NORTH-WEST TERRITORIES.

There is no corresponding section.

NOVA SCOTIA.

R. S. N. S., c. 83, s. 14, is substantially the same. "Registrar of Deeds" is used instead of "Registrar," and "Chapter" instead of "Act." The fee is 25 cents instead of 50 if declaration does not contain more than 100 words, and ten cents a hundred for all over a hundred.

Books to be kept.

13. It shall be the duty of each registrar to keep two alphabetical index books of all declarations delivered to him in pursuance of the provisions of this Act.

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BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 78, "Part" instead of "Act."

MANITOBA.

R. S. M., c. 114, s. 9, "It shall be the duty of the Prothonotary and Deputy Clerks of the Crown and Pleas to keep two alphabetical indices of all declarations of co-partnership or business styles filed in their respective offices in pursuance of the provisions hereof.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), s. 6.—"All declarations of co-partnership" instead of "all declarations" in pursuance of the provisions hereof.

NOVA SCOTIA.

R. S. N. S., c. 83, s. 15, is the same, using the word "Chapter" instead of "Act."

Firm Index Book.

14. In one of such books hereinafter called the "Firm Index Book," the Registrar shall enter in alphabetical order the styles of the respective firms in respect to which declarations have been delivered to him, and shall place opposite each such entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration in the manner shewn in the form of "Firm Index Book" given in Schedule "C" to this Act.

For Forms, see Appendix.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 79.—The same, but reference to Schedule D.

MANITOBA.

R. S. M., c. 114, s. 10.—"The Prothonotary or Deputy Clerk of the Crown and Pleas," "the styles of the respective firms and businesses," "comprising such firms, or carrying on such businesses."

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 7, is the same in effect as the Ontario Act, though the wording is slightly different.

NOVA SCOTIA.

R. S. N. S., c. 83, s. 16, is substantially the same as the Ontario section.

Individual Index Book.

15. In the second of such books hereinafter called the "Individual Index Book" the Registrar shall enter in alphabetical order the names of the respective members of each of such firms, and shall place opposite such entry the style of the firm of which such person is a member, and the date of the receipt of the declaration in the manner shewn in the form of "Individual Index Book," given in Schedule D to this Act.

For Forms, see Appendix.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 80, is the same, but reference to Schedule E.

MANITOBA.

R. S. M., c. 114, s. 11, corresponds, but with the same variations noted in preceding section.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 8, substantially the same as the Ontario section.

NOVA SCOTIA.

R. S. N. S., c. 83, s. 17, same as the Ontario section.

Fees.

16. The Registrar shall be entitled to charge for searches the following fees and no more:—

For searching in Firm Index—each firm ten cents;

For searching in Individual Index—each name ten cents;

For each certificate when required—twenty-five cents;

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BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 81, has in addition:—

For searching in Firm Declaration Book, each declaration five cents.

MANITOBA.

R. S. M., c. 114, s. 35, provides that "The Prothonotary, Deputy Clerks of the Crown and Pleas and Registrars shall receive the following fees:—

(a) For filing and recording every declaration or certificate under this Act, one dollar. . . .	\$1.00
(b) For searching in respect of each firm or business in the "Firm Index Book" or the book for registering certificates of limited partnerships, twenty-five cents.	.25
(c) For searching in the Individual Index Book in respect of each name, twenty-five cents.	.25
(d) For each certificate when required, seventy-five cents.	.75

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, s. 13, provides that "The said Registration Clerk shall be entitled for filing a declaration under this Ordinance to a fee of fifty cents, and for searches made in each of such books the following fees and no more:—

For searching in the Firm Index Book, each firm. . . .	.10
For searching in the Individual Index Book, each name . .	.10
For each certificate when required.	.25

NOVA SCOTIA.

R. S. N. S., c. 83, s. 18, same as Ontario section.

17. All the books required for the purposes of this Act shall be furnished by the treasurer of the municipality whose duty it is to furnish registry books (or in case of his default by the Registrar) in the same manner as other registry books.

BRITISH COLUMBIA.

R. S. B. C., c. 150, s. 82, provides that the books shall be furnished by Queen's Printer.

MANITOBA.

R. S. M., c. 114, contains no corresponding section.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, contains no corresponding section.

NOVA SCOTIA.

R. S. N. S., c. 83, contains no corresponding section.

18. This Act shall not be construed to apply to associations of individuals for the manufacture of cheese and contributing produce from their dairies for that purpose.

BRITISH COLUMBIA.

The British Columbia Act has no corresponding section.

MANITOBA.

The Manitoba Act has no corresponding section.

NORTH-WEST TERRITORIES.

The N. W. T. Act has no corresponding section.

NOVA SCOTIA.

The Nova Scotia Act has no corresponding section.

SEC. 7.—ADDITIONAL SECTIONS IN VARIOUS PROVINCES.

The Acts of some of the Provinces have sections which are not found in the Ontario Act.

BRITISH COLUMBIA.

It should be noted that the British Columbia Act is divided into three parts. The first part contains the codification of the Common Law rules as to Partnership. The Second Part deals with Limited Partnerships, and the third part deals with

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Registration of Partnerships. There are in addition three supplementary sections, which are as follows:—

82. The section given at p. 177.

83. The rules of Equity and Common Law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Act. See p. 94.

84. This Act does not apply to Mining Partnerships within the meaning of the Mineral Act, or of the Placer Mining Act.

85. This Act shall come into operation on the 1st day of July, 1894.

MANITOBA.

The Manitoba Act, R. S. M., c. 114, deals with Registration of Partnerships and Limited Partnerships. The codification of the Common Law rules as we have seen above is contained in 60 Vic., cap. 24.

In addition to the sections above set out the Manitoba Act contains the following section:—

36. All fees levied by or payable to the Prothonotary and the Deputy Clerks of the Crown and Pleas under this Act shall be payable to the Crown in stamps, subject to the provision of the Act respecting law stamps, and shall form part of the Consolidated Revenue fund of the Provinces.

NORTH-WEST TERRITORIES.

Con. Ord. (1898), c. 45, deals only with the Registration of Partnerships, and contains no additional sections.

NOVA SCOTIA.

R. S. N. S., c. 83, deals with the Registration of Partnerships and Limited Partnerships, and has also the following

Names to be on Bill Heads.

19. In all cases where a firm name is used the name or names of the person or persons composing the firm shall be distinctly written or printed on all the bill heads and letters made or issued by the firm.

20. Nothing in the foregoing provisions of this chapter shall be held to apply to cases arising under the provisions hereinafter contained as to Limited Partnerships.

Arbitration Clauses.

21. In cases of partnership where two persons only are concerned, and their partnership shall have terminated, either of them may file a petition in the Supreme Court stating the facts respecting their dealings, and praying the aid of the Court. A Writ of Summons shall thereupon issue against the partner complained of in the usual manner.

22. A copy of the petition shall be served on the partner complained of at the time of the service of the Summons.

23. On the return of the Summons, if it shall be shewn to the Court that the partnership consisted of two persons only, the Court shall by rule direct each partner to select one fit person as an arbitrator between them.

24. If the partners do not within the time specified by the Court select two such persons, the Court shall appoint two persons to act as arbitrators.

25. The two persons so appointed shall select one other person, and they, with such person, shall be arbitrators to examine and settle the partnership dealings.

26. The arbitrators before commencing such examination shall make before a judge or commissioner the following affidavit, which shall be filed in the Prothonotary's office.

We, A.B., C. D., and E.F., do hereby solemnly swear honestly and fairly to settle the partnership accounts and dealings of G. H. and J. L. to the best of our knowledge and ability.

Sworn at before me, this day 189

G. H., J.P.,

A. B.

C. D.,

E. F.

27. The arbitrators shall then order the production of all books, papers and accounts relative to the partnership dealings, and shall appoint such times and places as may appear expedient for the investigation of the partnership dealings and the examination of the partners and their witnesses. If either of the partners after due notice shall fail to attend, the arbitrators shall proceed "ex parte."

28. Witnesses shall be summoned to attend before the arbitrators by subpoena in the usual form, and if, upon being duly summoned, they shall neglect to attend and give evidence, they shall be liable to the same penalties as witnesses are subject to who neglect to attend the Supreme Court on subpoena; and the Supreme Court on application to them for that purpose shall enforce the same.

29. The arbitrators shall examine the partners and their witnesses upon oath to be administered by any one of the arbitrators, and shall make an award in favor of such party as they or two of them shall find justly entitled thereto, which shall be filed in the prothonotary's office, and judgment shall be entered for the amount thereof, with or without costs, as directed by the arbitrators in their award, at the next term if no sufficient objection be made thereto.

30. Execution may be issued on such judgment in the usual course, and the arbitrators or any two of them shall have power to direct the costs of the proceedings, including reasonable compensation for their services, to be taxed and allowed by the Court to be paid by either of the partners, and in such manner as the arbitrators or any two of them shall direct; and the Court shall enforce such payment by attachment or otherwise.

31. Neither of the partners shall, after such adjudication, commence any proceedings in the Supreme Court touching the partnership dealings, and the judgment of the Supreme Court under the above provisions shall be final. In proceedings in the Supreme Court for the settlement of partnership dealings under this chapter a judge at chambers may make any order therein subject to appeal to the Court in term.

Guarantee to a firm or of a firm to be in Writing.

46. No promise made to answer for the debt, default or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be

binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding, notwithstanding such change, shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

47. Nothing in this chapter shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of the Dominion of Canada.

CHAPTER II.

THE NEW BRUNSWICK ACT AS TO REGISTRATION.

- Sec. 1. Certificate of Partnership.
- Sec. 2. Certificate of Dissolution.
- Sec. 3. Duties of Registrars.
- Sec. 4. Penalty for Neglect to File Certificate.
- Sec. 5. Manner of Proving Partnership.
- Sec. 6. Publication of Certificate.

The New Brunswick Act as to Registration of Partnerships is contained in Consolidated Statutes of New Brunswick, cap. 97, sections 14 to 25, inclusive. It is not drawn on the same lines as the Acts in the other Provinces, and it will therefore be found more convenient to give its provisions separately.

The first part of this Act treated of Limited Partnerships. This part, however, was repealed by 45 Vic., cap. 24, which in turn was repealed by 52 Vic., cap. 4, for the provisions of which see p. 145.

SEC. 1.—CERTIFICATE OF PARTNERSHIP.

14. All persons now carrying on business together in co-partnership in this Province as general partners, and who have not heretofore signed, filed and published certificates in the manner herein provided, shall, within six months after the coming into force of this chapter, severally make and sign a certificate, which certificate shall contain the name or firm of the co-partnership, and the names and respective places of residence of the different partners.

15. In all general co-partnerships hereafter to be formed, or that shall at any time carry on business in this Province, the different members thereof do and shall, previous to entering upon the joint business, or to establishing the same

in this Province, severally make and sign a certificate containing the same particulars as mentioned in the last preceding section.

16. The signatures to all certificates made and signed under the provisions of Part Second of this Chapter, shall be acknowledged or proved in the same manner and before the same persons as Deeds of Conveyances are required to be acknowledged; and all such certificates being so made, signed and acknowledged, shall be forthwith filed in the office of the Registrar of Deeds for the respective county or counties where the co-partnership business is carried on.

SEC. 2.—CERTIFICATE TO BE SIGNED ON DISSOLUTION OR CHANGE.

17. On the occasion of a dissolution, or any change or changes in any co-partnership, a certificate shall be made and signed by the retiring, incoming and other partner or partners, which certificate shall state the name of the retiring partner or partners, and the names and respective places of residence of the incoming partners, and which certificate shall be forthwith acknowledged and filed as hereinbefore mentioned.

23. In case of dissolution, addition or alteration in the name of the firm, or of the parties composing any co-partnership, whose certificate has been filed in accordance with this chapter, it shall be imperative that a certificate of such dissolution, addition, or alteration, shall be within thirty days after such dissolution, addition or alteration, be (without any notice required to be given to the said parties or any of them) filed, registered and published as hereinbefore set forth for the filing of certificate of co-partnerships, and subject to the same penalties and forfeitures as for non-compliance with the filing of the original certificate in Part Second of this Chapter set forth.

SEC. 3.—DUTIES OF REGISTRARS.

18. The several Registrars of Deeds in and for the different counties in this Province are hereby required to receive and file all certificates produced to them, and duly acknowledged or proved according to the provisions of Part Second of this Chapter, and that each Registrar of Deeds respectively shall

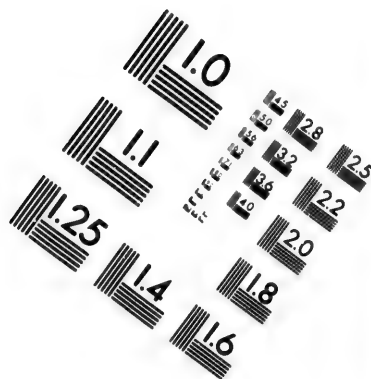
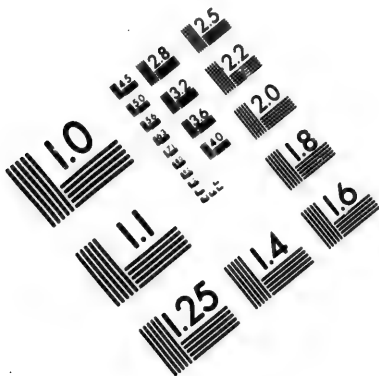
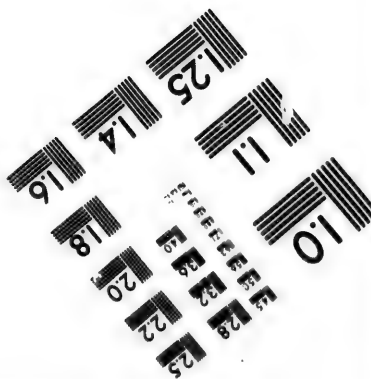
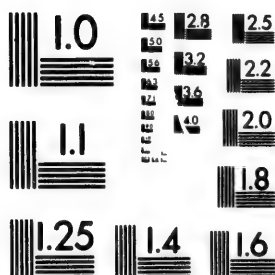


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keep a book in which he shall enter the different co-partnership names or styles, and the names of the different members composing each co-partnership. and for filing and entering each certificate he shall be entitled to receive and take a fee of twenty-five cents, and that such book shall at all times be open to inspection on payment of a fee of twenty cents for each inspection.

19. A copy of all such certificates shall, as soon as the same are filed, be published in the Royal Gazette for two consecutive weeks next following the filing thereof.

SEC. 4.—PENALTY FOR NEGLECT TO FILE CERTIFICATE.

20. Any person or persons engaged or hereafter to be engaged in business as general partners in this Province, neglecting or refusing to make, sign, acknowledge, file or publish such certificate as aforesaid, shall forfeit and pay the sum of sixty dollars, and shall also forfeit and pay the further sum of ten dollars per day for each and every day that such person shall so neglect or refuse after notice so to do from any creditor or creditors of such firm, or from any person or persons having dealings or transactions therewith.

21. The penalties imposed in and by the last section shall and may be recovered by action of debt, to be brought in the name of the Clerk of the Peace in and for the county in which such certificate should be filed, against the co-partnership by its joint style, name or firm, and that in any such action judgment may be signed against such co-partnership by its joint name, style or firm, and execution issued thereupon against the persons or goods, chattels, lands and tenements of the firm, which execution may be levied respectively upon the bodies of such members thereof as are known or upon their property; and all penalties recovered under Part Second of this Chapter shall be paid to the County Treasurer of the county for the uses and purposes of the said county where such certificate should have been filed.

22. Provided always that nothing herein contained shall be construed or held as in any way to prejudice or affect the rights of third parties against any co-partnership or to limit or restrain the liability of the different members thereof.

SEC 5.—MANNER OF PROVING PARTNERSHIP.

24. When a party may be desirous of proving the partnerships in any suit in a Court of Law or Equity, he may produce in evidence a copy of the registry of such certificate certified by the Registrar of the County where the same is registered, which copy shall be prima facie evidence of such partnership; provided always, that nothing herein contained shall prevent the parties from proving the partnership in the usual way.

SEC. 6.—PUBLICATION OF CERTIFICATE, ETC.

25. Whenever the publication of any notice or certificate in any newspaper is required by this chapter, and no such newspaper is published as herein required, such publication shall be made in the Royal Gazette.

CHAPTER III.

REGISTRATION OF PARTNERSHIP IN QUEBEC.

- Sec. 1. Declaration for Registration.
- Sec. 2. Effects of Registration.
- Sec. 3. Effects of Non-Registration.
- Sec. 4. Penalties for Non-Registration and their Recovery.
- Sec. 5. Registration by Married Women.

SEC. 1.—DECLARATION FOR REGISTRATION.

C. C. 1834 (*in part*). In partnerships for trading, manufacturing or mechanical purposes, or for the construction of roads, dams and bridges, or for the purpose of colonization, or of settlement, or of land traffic, the partners must deliver to the Prothonotary of the Superior Court in each district, and to the Registrar of each county, in which they carry on business, a declaration in writing in the form and subject to the rules provided in the statute intituled: "*An Act respecting Partnerships.*"

This Act respecting Partnerships is to be found in Articles 5635 and following of the Revised Statutes of Quebec. They follow.

R. S. Q. 5635.—The declaration which should be submitted to the Prothonotary and Registrar under the Civil Code by all persons associated in partnership, in the Province, for trading, manufacturing or mechanical purposes, or for purposes of construction of roads, dams, bridges or other works, or for the purposes of colonization, or of settlement, or of land traffic, shall be signed by the several members of such partnership, and if any of the said members be absent at the time, then by the members present, in their own names and for their absent co-members, under their special authority to that effect.

- 2. Such declaration shall be in the form or to the effect of

the Schedule A annexed to this section, and shall contain the names, surnames, addition and residence of every partner, and the name, style or firm, under which they carry on or intend to carry on such business, and shall state the time during which the partnership has existed, and declare that the persons therein named are the only members of such partnership.

Form of Declaration.

Province of Quebec, }
District of }

We of in (Grocers),
hereby certify that we (have carried on and) intend to carry on trade and business as (grocers), at , in partnership under the name and firm of (or, as the case may be), or I (or we), the undersigned, of
hereby certify that I (or we) (have carried on and) intend to carry on trade and business as at in partnership with C. D., of , and E. F., of , and that the said partnership has subsisted since the day of one thousand , and that we (or I or we, and the said C. D. and E. F.), are, and have been since the said day the only members of the said partnership.

Witness our hands at , this day
or one thousand (or as the case may be).

C. S. L. C., c. 65, Schedule.

3. Such declaration shall be filed within sixty days after the formation of the partnership.

4. A similar declaration shall be filed in like manner when and so often as any change or alteration takes place in the membership of such partnership, or in the name, style or firm under which they intend to carry on business.

R. S. Q. 5635 (a) (Added by 61 Vic., cap. 42.)—No such declaration can be registered if it give to any partnership the name, style or firm name of an existing partnership, or a name, style or firm name so similar that the public may be induced into error.

Every registration made contrary to the provisions of this article may be annulled by the Superior Court of the district, upon petition of which notice has been given to the parties interested, to the Prothonotary and to the Registrar.

R. S. Q. 5637.—The Prothonotary and the Registrar shall enter such declaration in a registry book, which they shall keep to that effect, which book shall, at all times during office hours, be gratuitously open to public inspection.

Each may require from the person delivering such declaration the sum of fifty cents for registering it, if it does not contain more than two hundred words, and the sum of five cents for each additional hundred words.

The fee is the same for every certificate required and delivered.

SEC. 2.—EFFECTS OF REGISTRATION.

C. C. 1835.—The allegations contained in the declaration mentioned in the last preceding article cannot be controverted by any person who has signed the same, nor can they be controverted, as against any party not being a partner, by a person who has not signed, but who was really a member of the partnership at the time the declaration was made; and no partner, whether he has signed or not, is deemed to have ceased to be a partner until a new declaration has been made and filed as aforesaid, stating the alteration in the partnership.

It was held, before the Code, that particular notice of dissolution had to be given to persons with whom the partnership had been in the habit of dealing, and general notice in the Gazette to all with whom it had not, in order to exonerate the several members of the partnership from payment of the debts due to third persons, not notified, and who contracted with any of them, in the name of the firm, either before or after dissolution. (Court of Appeals—*Symes v. Sutherland*, Stuart's Rep. 49.)

Cases in somewhat the same sense are *Murphy v. Page*, 5 L. C. J. 335; *Greenshields v. Wyman*, 21 L. C. J. 40; *C. R. Coutu v. Guevremont*, 31 L. C. J., p. 128.

After registration of declaration that an individual has

ceased to be a partner, no evidence on the part of the firm will be allowed to contradict that statement. (C. R., McLachlan v. Accident Ins. Co., R. J., 3 C. S., 230.

C. C. 1836.—Any partner, although not mentioned in the declaration may be sued jointly and severally with the partners mentioned therein, or the latter may be sued alone, and if judgment be recovered against them, any other partner or partners may be sued on the original cause of action on which such judgment was rendered.

The rules which govern the determination of liability in such a case are to be found in Part I., Chapter I., sects. 1 and 2 of this work. (Ante pp. 17 and 19.)

The case of Peoples Bank & Gauthier (R. J., 14 S. C., 18, ante pp. 23 and 28) is also of interest under this article.

SEC. 3.—EFFECTS OF NON-REGISTRATION.

C. C. 1834 (*in part*).—The omission to deliver such declaration does not render the partnership null; it subjects the contravening parties to the penalties and liabilities imposed by the Statute.

C. C. 1837.—When persons are associated as partners in Lower Canada (Province of Quebec) for any of the purposes mentioned in article 1834 (ante p. 185), and no declaration has been filed as aforesaid, any action which might be brought against all the members of the partnership may also be brought against any one or more of them, as carrying on or as having carried on trade jointly with others, without naming such others in the writ or declaration, under the name and style of their partnership firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment has been rendered; but when any such action is founded on an obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein must be made parties to such action.

C. P. 122 (*in part*).—If a commercial partnership, having its principal place of business outside the district, is not re-

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gistered therein, it may be summoned by its firm name, with mention of the place where such principal place of business is situated; but the judgment rendered against it is then executory only against partnership property.

SEC. 4.—PENALTIES FOR NON-REGISTRATION AND THEIR RECOVERY.

R. S. Q. 5639.—Every member of a partnership or person doing business under a co-partnership style, failing to comply with the provisions of this section, is liable to a fine of two hundred dollars, to be recovered before any court of competent civil jurisdiction by any person suing as well in his own behalf as in behalf of Her Majesty.

One-half of such penalty belongs to the Crown, for the use of the Province, and the other half to the party suing for the same, unless the suit be brought, as it may be, on behalf of the Crown alone, in which case the whole of the penalty belongs to Her Majesty for the use aforesaid.

2. *The provisions of the law respecting qui tam actions* apply to suits for penalties under this section.

These provisions are as follows:—

A party cannot plead therein in forma pauperis (C. P. 89). The defendant may require that the plaintiff be ordered to give security for the payment of the costs. (C. P. 180.)

R. S. Q. 5716.—No process or summons shall be issued in any popular or qui tam action or prosecution for the recovery of penalties, unless there be filed, along with the praecipe or requisition for such process, an affidavit of such prosecutor declaring that, in so prosecuting, he is not acting in collusion with the defendant in such action, nor does he so prosecute for the purpose of preventing such action, or prosecution being instituted by any other person, or for the purpose of delaying it, or causing it to miscarry, or for the purpose of saving such defendant from the payment of the whole or any part of such penalty, or for procuring to him any advantage, but that he institutes such prosecution or action in good faith, and for the purpose of recovering and enforcing the payment of such penalty with all practicable celerity.

The affidavit required by this section should also mention the cause of action; and it has been held that any irregularity in it can be invoked by a plea to the merits, the obligation to produce it being a matter of public order. (*Nicolle v. Herald Co.*, 18 R. L., 14.)

Other cases in which the sufficiency of the affidavit or declaration were discussed are *Barnes v. Cousineau* (M. L. R., 5 C. S., 327), and *Devin v. Vaudry* (M. L. R., 5 C. S., 112).

R. S. Q. 5717.—No such action or prosecution shall be discontinued or suspended without the special and express permission or direction of the Crown.

Every such prosecutor who discontinues or suspends such action or prosecution, without such permission or direction, shall be punishable by fine or imprisonment, at the discretion of the Court before which he has been tried and convicted for such offence.

The extent of the fine or imprisonment is here left to the discretion of the Court, but there is a reference at the foot of the Statute to R. S. C., c. 173, s. 31, which made the offence a misdemeanor, punishable by five years imprisonment or less.

Since the repeal of the Statute R. S. C., c. 173, the Criminal Code renders the offender liable to a fine not exceeding the penalty compounded for. (Cr. Code, section 155.)

R. S. Q. 5718.—The Crown may intervene in such actions or prosecutions at any stage thereof, and assume the sole conduct of the same; provided that if, after the termination thereof, it shall appear that there has been a reasonable ground for such prosecution, and if such prosecutor shall have afforded to the Crown, which shall have so intervened, all the aid and information in his power to bring such prosecution to a successful end, the Crown shall pay to such prosecutor the costs incurred by him in such prosecution.

An action will not lie against two defendants, jointly and severally, for one penalty for non-registration of partnership. Each individually is liable for the whole penalty. (*Bernard v. Gaudry*, 4 L. N. 385.)

A partner who is not domiciled in the Province of Quebec

need not sign the declaration, and is not liable for the penalty. (*Jelly v. Bins*, 32 L. C. J. 96; C. R., *Jelly v. Dunscombe*, 16 R. L. 644; M. L. R. 4 S. C. 404; 35 L. C. J. 1.)

SEC. 5.—REGISTRATION BY MARRIED WOMEN.

The capacity of married women to enter into partnership has already been considered (*ante* p. 26). Partnership would not absolve them from making the declaration required by the following article, although its requirements could be combined with those of the ordinary declaration.

R. S. Q. 5502 (a) (added by 60 Vic., cap. 49, sec. 13).—No married woman separate as to property can carry on trade until she has delivered to the Frothonotary of the district and to the Registrar of the county in which she intends to carry on trade a declaration in writing stating her intention, her name and surname and those of her husband, and the style in which she proposes carrying on such business. This declaration is entered and transcribed in the same registers as declarations concerning partnerships mentioned in articles 5635 and following of these Revised Statutes.

Any married woman, separate as to property and carrying on trade, who fails to comply with the requirements of this article, is liable to a penalty of two hundred dollars, which may be recovered before any court of competent civil jurisdiction, by any person suing as well in his own name as on behalf of the Crown, and one-half of such penalty belongs to the prosecutor and the other half to the Crown, unless the suit be brought in the name of the Crown only, in which case it is entitled to the whole of the penalty.

It is to be noted that by this section no married woman can even *begin* to carry on business before the declaration is filed. It does not allow a delay of sixty days, permitted in ordinary cases by R. S. Q., 5635 (*ante* p. 186).

The penalty of \$200.00 can be recovered in the same way as that under R. S. Q., 5639 (*ante* p. 189).

The action under the latter is, however, quite distinct from that under R. S. Q. 5502 (a), and the two actions may be taken against the same person, if she has conformed to the law in neither case. (*Devine v. Vaudry*, M. L. R., 5 S. C., 112.)

PART IV.

PRACTICE.

CHAPTER I.

PRACTICE IN ONTARIO.

Sec. 1. Actions by and against Partnership Firms in the High Court.

- (a) Partners may Sue or be Sued in Firm Name.
- (b) Service on Partners.
- (c) Appearance by Partners.
 - (a) Partners to Appear Individually.
 - (β) Person having Control need not Appear.
 - (γ) Appearance under Protest.
- (d) Execution against Partners.
- (e) Actions between Firm and one of its Members.
- (f) Actions by and against Person Carrying on Business in Name or Style other than His Own.

Sec. 2. Actions in County Courts.

Sec. 3. Actions in Division Courts.

Sec. 4. Appointment of Receiver.

SEC. 1.—ACTION BY AND AGAINST PARTNERSHIP FIRMS.

- (a) *Partners may Sue or be Sued in the Firm Name.*

By Rule 222 of the Consolidated Rules of Practice it is provided that "Any two or more persons (whether British subjects or not, and whether residing within or without Ontario), claiming or being liable as partners, and carrying on business within Ontario, may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action; and any party may in such case apply to the Court or a Judge for a statement of the names and addresses of the persons who were at the time of the accruing of the cause of action co-partners in the firm to be verified on oath or otherwise as may be directed. This rule is substantially the same as the Eng. Rule (1891) 1, 48, *a. r. 1.*

A plaintiff may of course sue some or all of the partners in their individual names, but if he sues some of them and recovers judgment, this judgment, as we have seen at p. 44-45, will be a bar to an action against the remaining partners because the liability sued on is a joint liability. Further, if some only are sued, they may insist on the others being joined. A single person cannot sue in a firm name under this rule. *Mason v. Mogridge*, 8 T. L. R. 805. But though a person carrying on business alone in a name denoting a partnership cannot bring an action in that name, yet when such name consisted of his surname prefaced by the initials of his Christian name, and followed by the words "& Co.," it was held that these words were mere surplusage, or if not, and no one was misled or prejudiced, an amendment striking them out should be granted as of course. *Lang v. Thompson*, 16 P. R. (Ont.), 516. A single person may, however, be sued in his firm name. As we have seen at p. 159, the names of the individual members comprising a firm carrying on a trading, manufacturing or mining business, are required by R. S. O., cap. 152, to be registered in the registry office for the county or registry division in which the business is carried on. And see sections 7 and 8 of same Act as to parties to action when declaration not registered.

"CARRYING ON BUSINESS."

Though the members of the firm need not be British subjects or resident within the jurisdiction, the firm must, in order to bring the case within the above rule, carry on business in the Province. Not only can a firm not carrying on business within the Province not be sued, but they cannot sue in the firm name. They must sue and be sued in their individual names.

What constitutes carrying on business is discussed in the following cases:—

Worcester v. Firbank, 1894, 1 Q. B. 784;

Grant v. Anderson, 1892, 1 Q. B. 108;

Singleton v. Roberts, 70 L. T. 687.

See also *La Bourgogne*, 1899, L. R. 1, P. 1.

It is a question of fact which must be determined upon the particular circumstances of each case. It may be gathered from the cases above referred to, however, that "the possession within the jurisdiction of a place of business held in the name of the firm where business is carried on on behalf of the firm by a partner or by a person or persons in the pay of the firm" will be held to constitute "carrying on business" within the meaning of the rule. See *Snow An. Pr.* 1899, 659, *Holmsted & Langton*, 2nd ed. 395.

The fact of a partner coming regularly to transact business if there be no place of business, will not be sufficient to bring the case within the rule, even though all the partners are British subjects. *Singleton v. Roberts*, 70 L. T. 687.

Whether the premises in which the business is carried on are rented by the firm or by the representative, or whether the representative makes contracts or simply receives orders, appear to be material circumstances. See *La Bourgogne*, *supra*; *Grant v. Anderson*, *supra*. When a firm simply employs an agent to receive orders, and the agent rents his own premises, the firm is not carrying on business within the meaning of the rule.

AND ANY PARTY MAY APPLY, ETC.

See note to Rule 223. See also rule 144, which provides that:—

144. (1) Where an action is brought by partners in the name of their firm, the plaintiffs or their solicitor shall, on demand in writing by or on behalf of any defendant, declare forthwith in writing the names and places of residence of all the persons constituting the firm.

(2) If the plaintiffs or their solicitor fail to comply with such demand, all proceedings in the action may upon an application for that purpose be stayed upon such terms as the Court or a judge may direct.

(3) Where the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ, but all proceedings shall nevertheless continue in the name of the firm.

(b) Service on Partners.

223. Where persons are sued as partners in the name of the firm under rule 222, the writ shall be served either upon any one or more of the partners, or at the principal place within Ontario of the business of the partnership upon any person having the control or management of the partnership business there, and subject to these rules such service shall be deemed good service upon the firm whether any of the members thereof are without Ontario or not, and leave to issue a writ against them shall not be necessary, but in the case of a partnership which has been dissolved to the knowledge of the plaintiff before action, the writ of summons shall be served upon every person within Ontario sought to be made liable.

This is substantially the same as Eng. O. 48 *a. r.* 3.

The former English and Ontario rules did not contain the last clause, but ended at the words "shall be deemed good service upon the firm." Under the old rule it was held by the Court of Appeal in *Russell v. Cambefort*, 23 Q. B. D. 526, that when a firm consisted of persons who were not British subjects, and who were resident out of the jurisdiction, though they had a place of business and carried on business within the jurisdiction, they could not be served under this rule. *Cotton, L. J.*, at p. 528, "it ought to be construed as applying to partnerships, the members of which either by their nationality or residence have become subject to English law and the power of Parliament," *Western v. Perez*, 1891, 1 Q. B. 304, but this construction does not apply when one of the partners is domiciled and the firm carries on business within the jurisdiction. *Lysaght v. Clark* (1891), 1 Q. B. 552.

Subsequent to these decisions the English rules and the corresponding Ontario rules were altered as above so as to apply to persons carrying on business within the jurisdiction though they are neither British subjects nor reside within the jurisdiction. The principle laid down in *Russell v. Cambefort* was, however, held to apply to O. 48, *a. r.* 11, which corresponds to Ont. rule 231, *St. Gobain v. Hoyer mann*, 1893, 2 Q. B. 96. So that in England a person carrying on business within the jurisdiction in a name or style other than his own

cannot, if he is a non-resident and not a British subject, be sued under O. 48, *a. r.* 11. The Ontario rule, 231, however, has the words "whether a British subject or not, and whether residing within or without Ontario," and also a provision that the writ may be served upon any person having the control or management of the business at the place of business in Ontario, or if more than one at the place in the county where the cause of action arose. See rule 231, s. sec. (3), *infra*, p. 204. Accordingly, under the Ontario rules, when two persons are carrying on business as partners, or when a person is carrying on business under a name or style other than his own, though not a British subject, and not domiciled in Ontario, service may be effected on the firm or on the person so carrying on the business by serving, in the case of a partnership, any one or more of the partners or any person having control or management of the business at the principal place of business of the partnership in Ontario, or, in the case of a person carrying on business in Ontario in a name or style other than his own, by service on such person or upon any person having the control or management of the business in Ontario.

It would seem on the principles laid down in *Russell v. Cambefort*, *supra*; *Western v. Perez*, *supra*; *Indigo v. Ogilvy* (1891), 2 Ch. 31; *Heinemann v. Hale* (1891), 2 Q.B. 83; *Dobson v. Festi* (1891), 2 Q. B. 92, that if for any reason it is sought to bind the individual property of any of the partners or to effect any other object which renders it necessary or advisable to serve any partner so as to bind him personally, he cannot, if he be domiciled out of the jurisdiction and a foreigner, be served under this rule, but the ordinary practice for service out of the jurisdiction must be followed. See *Snow*, An. Pr. 1899, p. 662. See also *re Sinclair & Bell*, 28 O. R. 483, at p. 485.

It is to be noted, however, that the above cases were decided under the old rules, and it cannot be said to be settled beyond question that in dealing with such a case under the new rules the courts would follow the above decisions. See *Worcester v. Firbank*, 1894, 1 Q. B., 784, and *Holmested & Langton*, 2nd Ed., pp. 397-8-9.

When the case comes under this rule the writ may be served upon one of the partners within the jurisdiction, or by serving it at the principal place of business of the partnership within the jurisdiction if they have such a place, upon any person having control or management of the business there. But these are the only two modes of service under this rule. Substituted service upon any other person cannot under this rule be allowed. *Worcester v. Firbank*, 1894, 1 Q. B. 784, 788. A plaintiff might, of course, proceed against partners out of the jurisdiction personally, by obtaining leave under the rules as to service out of the jurisdiction, and might in a proper case obtain an order for substituted service, but such a proceeding would not be a proceeding against the firm within the meaning of the above rules.

In the case of an Ontario partnership, and in the case of a partnership some of whose members reside within Ontario, it does not seem clear when the proceeding is under those rules whether a partner within Ontario may be served substitutionally. *Holmsted & Langton*, 2nd Ed., p. 398, and *Shillito v. Childs*, W. N., 1883, 208; *Croydon v. Jackson*, 3 T. L. R. 650, and *Worcester v. Firbank*, *supra*, at p. 790-2, there cited.

In *Shillito v. Childs* it was held that substituted service could not be ordered. In *Croyden v. Jackson* the Master of the Rolls said it was absurd to say substitutional service could not be ordered when a firm was sued. *Worcester v. Firbank* was decided on the ground that substituted service cannot be ordered when personal service could not be validly affected.

If it is sought to bind the property of the individual partners as well as the assets of the firm they should be served personally because, if they are not personally served and do not appear in their own names under rule 225 or 226, judgment cannot be signed against them personally, but only against the firm.

“AT THE PRINCIPAL PLACE, ETC.”

This means a place within the jurisdiction where the business of the firm is carried on in the firm's name by a partner or some person who is in the pay of the firm. *Snow*, An. Pr.

1899, 663; Worcester v. Firbank, *supra*; Grant v. Anderson (1892), 1 Q. B. 108. It does not mean an agency. See Baillie v. Goodwin, 33 Ch. D. 604. For discussion as to what constitutes a carrying on of business and not a mere agency, see La Bourgogne (1899), 1 P. 1, Murphy v. Phoenix Bridge Co., 18 P. R. 406, though these decisions were under the rules as to service on corporations.

Service on a receiver and manager appointed by the Court is bad, *re* Flowers, 1897, 1 Q. B. 14.

"BUT IN THE CASE OF A PARTNERSHIP WHICH
HAS BEEN DISSOLVED."

This proviso was formerly contained in rule 317, for which rule 222 is now substituted. The history of the proviso is given in Shepherd v. Hirsch, 45 Ch. D. 231, p. 234.

Under this proviso an action may be brought against the firm in the name of the firm as it existed at the date of accrual of the right of action, notwithstanding that it may have been dissolved before action. But if it has been so dissolved to the knowledge of the plaintiffs, the writ of summons must be served upon every one in Ontario sought to be made liable.

If in such case any of the partners are out of the jurisdiction, they must be made parties to the writ, and served under the rules for service out of the jurisdiction. See note at end of Shepherd v. Hirsch, *supra*. When plaintiff does not know of the dissolution he can serve his writ as provided in the first part of the rule.

224. Where a writ is issued against a firm and is served as directed by rule 223, every person upon whom it is served shall be informed by notice in writing given at the time of service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice the person served shall be deemed to be served as a partner.

See Nelson v. Pastorino, 49 L. T. 564.

The notice need not be directed to anyone by name.

*(c) Appearance by Partners.**(a) Partners to Appear Individually.*

225. "Persons sued as partners in the name of the firm shall appear individually in their own names, but all subsequent proceedings shall continue in the name of the firm."

The time for appearance is to be computed from the time of a valid service on the firm under rule 223. Where a manager and partner are both served, it runs from the date of the last of such services. *Alden v. Beckley*, 25 Q. B. D. 543.

If a person is served as a partner he may appear and dispute the fact of his being a partner. If he is not served as a partner he should not appear at all.

See *Davies v. Andre*, 24 Q. B. D. 598.

Partners should, if possible, put in one defence, but if they cannot agree and put in inconsistent defences, the plaintiffs, in order to succeed, must satisfy the Court that not one of the defences prevents a judgment being entered against the partnership. *Ellis v. Wadeson* 1899, 1 Q.B., p. 714, and see *Cropper v. Smith*, 10 App. Cas. 249, and *Melbourne v. Toronto*, 13 P. R. 346; *Logan v. Kirk*, 14 P. R. 130. When a partner has not been served, but an appearance is entered for him by instruction of a co-partner, who has been served on behalf of the firm, such appearance, if unauthorized, will be set aside on the prompt application of the partner in whose name it was entered. *Mason v. Cooper*, 15 P. R. 418, but ordinarily instructions from a managing partner to defend an action for the price of goods supplied to the firm in the ordinary course of business is good authority to a solicitor to enter an appearance for all the partners.

Tomlinson v. Broadsmith (1896), 1 Q. B. 386; *Court v. Berlin* (1897), 2 Q. B. 396; *Holmsted & Langton*, 2nd Ed., 401.

Where one partner is an infant, and appears by a guardian ad litem, the appearance is proper, but the judgment when granted should be against the firm "other than A. B., an infant." *Harris v. Beauchamp* (1893), 2 Q. B. 534.

Re Beauchamp (1894), 1 Q. B. 1.

Lovell v. Beauchamp (1894), A. C. 607.

Where one partner dies after writ and appearance, the surviving partner should not put in a personal defence, but one in the name of the firm. *Ellis v. Wadeson*, 1899, 1 Q. B. 714.

In such a case the form of the defence should be as follows: "Statement of defence of A. B. (the partnership name), by B., sole surviving partner, *ib.*"

If the partner dies before action the action may still be brought against the firm, but if it is sought to bind the deceased partner's estate his personal representative should be joined, *ib.* Where partners have recovered a judgment, and one of them dies, the action survives, so that the surviving partner may issue execution. *Davies v. Andrews*, 28 Sol. Jour 4-11.

(β) Person having Control need not Appear.

226. Where a writ is served under rule 223, upon a person having the control or management of the partnership business, an appearance by him shall not be necessary unless he is a member of the firm.]

(γ) Person may enter Appearance under Protest.

227. A person served as a partner under rule 223 may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form.

Judgment cannot be entered individually against a partner who does not appear. The plaintiff is left to his rights under rule 228. *Jackson v. Litchfield*, 8 Q. B. D. 474, *Adam v. Townend*, 14 Q. B. D. 103; *Firmin v. International Club*, 5 T. L. R. 612.

(d) Against what Property Execution may Issue when Judgment Obtained against Firm.

228. (1) Where a judgment or order is obtained against a firm execution may issue:

- (a) Against any property of the partnership within Ontario;
- (b) Against any person who has appeared in his own

name under rule 225 or rule 226, or who has admitted on the pleadings that he is or who has been adjudged to be a partner.

(c) Against any person who has been individually served as a partner with the writ of summons, and has failed to appear.

(2) If the party who has obtained the judgment or order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave so to do, and the Court or a Judge may give such leave, if the liability be not disputed, or, if disputed, may order that the liability be determined in any manner in which any issue or question in an action may be determined. Except as against any property of the partnership, a judgment against a firm shall not render liable release or otherwise affect any member thereof who was out of Ontario when the writ was issued, and who has not appeared to the writ, unless he has been made a party under rules 162 to 167, or has been served within Ontario after the writ was issued.

Infant Partners.

In the case of an infant partner execution may issue against the firm so as to bind the firm assets, but it cannot bind the infant partners individually.

Clause (2) does not apply in the case of a partnership by estoppel. *Standard Bank v. Frind*, 15 P. R. 438; *Ray v. Isbister*, 22 A. R. Ont. 12.

Rules 162 to 167 are the rules for service out of Ontario.

See provisions of R. S. O., cap. 152, sec. 8.

229. Debts owing from a firm carrying on business within the jurisdiction may be attached under rule 911, although one or more members of the firm may be resident out of Ontario, provided that any person having the control or management of the partnership business or any member of the firm within Ontario is served with the attaching order. Appearance by a member pursuant to the order shall be sufficient appearance by the firm.

Same as the Eng. Rule, O. 48 a r 9.

The right to attach debts is by rule 911 confined to cases where the garnishee is within Ontario, and where, under rule 162, leave might be given to the debtor to serve a writ of summons on a garnishee out of the jurisdiction, under rule 162; see rule 911. *Parker v. Odette*, 16 P. R. 69; *Boswell v. Piper*, 17 P. R. 257. The present rule, therefore, is an enlargement of the right to attach debts due by firms given by rule 911, to cases where some of the garnishees are out of Ontario upon proof that their firm carries on business within the jurisdiction.

The appearance referred to in this rule is merely the appearance by a member of the firm by solicitor or counsel upon the motion to pay over, and not the formal entry of an appearance as provided by by rules 169, 225. *Holmested v. Langton*, 2nd Ed. 406.

(e) Actions between Firm and one of its Members.

230. Rules 222 to 229 shall apply to actions between a firm and one or more of the members, and to actions between firms having one or more members in common, if the firm or firms carry on business within Ontario, but execution shall not issue in such actions without leave of the Court or a Judge, and on an application for leave all such accounts and inquiries may be ordered and directions given as may seem just.

Same as the Eng. Rule, O. 48a, r. 10.

Although rule 228 is made applicable to the class of actions mentioned in this rule, yet the subsequent words of the rule show that in no case coming within this rule is execution to issue without leave. *Holmested & Langton*, 2nd Ed., 406.

(f) Actions by and against Person Carrying on Business in Name or Style other than His Own.

231. (1) Any person (whether a British subject or not, and whether residing within or without Ontario) carrying on business within Ontario in a name or style other than his own name, may be sued in such name or style.

(2) Leave shall not be necessary to issue the writ of summons in such case.

(3) The writ may be served upon the person so carrying on the business, if he be within Ontario, or at the place of business within Ontario (or if there are several such places at the place within the county in which the cause of action arose), upon any person having the control or management of the business there; and such service shall be equivalent to personal service on the person so sued.

(4) The person upon whom the writ is served shall be informed by notice in writing given at the time of service whether he is so served as the person carrying on the business or as a person having the control or management of the business, or in both characters. In default of such notice he shall be deemed to be served as the person carrying on the business.

(5) Any party may apply to the Court or a Judge for a statement of the name and address of the person who is, and of the person who, at the time of the accruing of the cause of action, was carrying on business in such name or style, to be furnished in such manner and verified on oath or otherwise, as may be directed.

(6) The person so sued shall appear in his own name, but all subsequent proceedings shall continue in the said name or style.

(7) A person served as the person carrying on the business may enter an appearance under protest, denying that he is the person so carrying on the business; but such appearance shall not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of appearance in the ordinary form by the person so sued.

(8) Where a writ is served under clause 3 of this rule on a person having the control or management of but not carrying on the business, an appearance by him shall not be necessary.

(9) Any judgment or order in the action may be enforced by execution against

(a) The property of the person so sued, used or employed in or in connection with the business;

(b) The property within Ontario of the person so sued if he has appeared in the action, or has been adjudged

to be the person carrying on the business, or has been personally served with the writ within Ontario and has failed to appear.

(10) If the person so sued has not appeared or has not been personally served, or has not been adjudged to be the person carrying on the business, the plaintiff may apply for leave to issue execution against the person within Ontario whom the plaintiff alleges to be the person carrying on the business, and the Court or a Judge may give such leave if the liability be not disputed, or, if disputed, may order that the liability of such person be determined in any manner in which any issue or question in an action may be determined.

SEC. 2.—COUNTY COURTS.

R. S. O., cap. 55, sec. 23, s.-sec. 9, provides that County Courts shall have jurisdiction: "In actions by persons entitled to and seeking an account of the dealings and transactions of a partnership, the joint stock or capital not having been over \$1,000, whether such account is sought by claim or counter-claim.

SEC. 3.—DIVISION COURTS.

By R. S. O., cap. 60, sec. 110, it is provided that:—

110. In case of a debt or demand against two or more persons, partners in trade, or otherwise jointly liable, but residing in different divisions, or one or more of whom cannot be found, one or more of such persons may be served with process, and judgment may be obtained and execution issued against the person or persons served notwithstanding others jointly liable have not been served or sued, reserving always to the person or persons against whom execution issues his or their right to demand contribution from any other person jointly liable with him. See *re Sinclair & Bell*, 28 O. R. 483, at p. 485.

111. Where judgment has been obtained against such partner, and the Judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and

sell the property of the firm as well as that of the defendants who have been served.

112, s.-s. 4. Any two or more persons claiming or being liable as co-partners, may sue or be sued in the name of the respective firms, if any. Where partners are sued in the name of their firm the summons may be served on one or more of the partners, and subject to the provisions in the next two sub-sections contained; such service shall be deemed good service upon the firm; but the affidavit of the service of the summons shall state the name of the partner served. Any party may at any time before or after judgment apply to the judge for an order directing a statement to be furnished of the names of all the persons who are co-partners in any firm which is a party to the action by the firm named.

Compare rule 222, p. 193, *supra*, and the old rules 317, and J. A. rule 100, which were the originals of rule 222.

It will be noted that the words, "of which such persons were co-partners at the time of the accruing of the cause of action," are not contained in the above rule. It was held, however, under the old High Court rules, which did not contain these words, that the right to sue partners in the name of their firm was not limited to the case of partners carrying on business at the date of the writ, and it is a question of fact whether the plaintiff intended to sue under the firm name former partners as well as those composing the firm at the date of the commencement of the action. *Davis v. Morris*, 10 Q.B.D. 436; *ilsWon v. Roger*, 10 P. R. Ont. 355; *Ex. p. Young*, 19 Ch. D. 124; *Munster v. Raillton*, 10 Q. B. D. 475.

As we have seen at p. 196, *supra*, the original High Court rules to which the above rule corresponds were held not to apply to foreign firms. *Russell v. Combefort*, *supra*.

St. Gobian v. Hoyer mann (1893), 2 Q. B. 96, and other cases above cited. These cases are applicable to the above rules. But section 105, s.-s. (1), of the same Act, R. S. O. 60, provides that:—"Every summons or process issued out of a Division Court against a corporation, firm or individual not having its chief place of business within the Province, and all subsequent papers and proceedings in the action, or proceeding in which

the summons or process has been issued, may be served on the agent of the corporation, firm or individual whose office or place of residence as such agent is either within the division in which the summons or process issued or is nearest thereto." So that a foreign firm who has an agent within the jurisdiction as above provided may be sued under the above section.

This section 105 was first introduced in 1885. Prior to that there was no provision by which in ordinary actions against such corporations or person residing out of, but carrying on business within the Province, service of process could be effected. Bicknell & Seager, p. 137, and the following cases there cited: Ahrens v. McGilligat, 23 C. P. 171; Westover v. Turner, 26 C. P. 510; In re Guy v. G. T. R., 10 P. R. 372; Berkley v. Thompson, 10 App. Cases 45; Ont. Glass Co. v. Swartz, 9 P. R. 252; R. v. Lightfoot, 6 E. & B. 822. See also Queen v. Webb, 1896, 1 Q. B. 487.

The section formerly applied only to corporations, but by 52 V., c. 12, s. 11, "firms or individuals" were included.

112, s.-s. 5. Where a judgment is against partners in the name of the firm, execution may issue in the manner following:

- (a) Against any goods of the partners;
- (b) Against the goods of any person who has admitted in the notice of dispute or defence filed that he is a partner or who has been adjudged a partner;
- (c) Against any person who has been served as a partner with a copy of the summons, and who has failed to appear.

See rule 228, High Court, *supra* p. 201.

112, s.-s. 6. Upon the trial of an action against a firm, if the plaintiff is desirous of obtaining a judgment against the individual partners other than the one served with a copy of the summons, and in addition to his judgment against the firm he may procure the addition of the remaining partners as defendants under sub-sections 1 and 3 of this section, and thereafter proceed to judgment against them in the action as in other cases.

Sub-sections 4, 5 and 6 of 112 do not apply to partners by "holding-out." *Young v. Parker*, 12 P. R. 646. Sub-section 4 applies to a firm which has been dissolved. *Ib.*

SEC. 4.—APPOINTMENT OF RECEIVER.

By section 58, sub-section 9, of the Judicature Act, R. S. O. 51, a receiver may be appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just and convenient.

The mere fact of a dissolution does not entitle a partner to a receiver against his co-partners. *Pini v. Roncoroni*, 1892, 1 Ch. 633. The lunacy of a partner is a ground for appointing a receiver. *J. v. S.*, 1894, 3 Ch. 72.

A receiver and manager of a partnership business were appointed at the instance of the trustee in bankruptcy of one of the partners, notwithstanding a provision in the articles that the share of a bankrupt partner should remain in the business as a loan to the solvent partners until the end of the term.

In an action for the dissolution and winding up of an insolvent partnership, an order was made for the sale of the assets by a receiver before trial, the assets being of such a character that their sale at once was desirable, and other special circumstances existing. *McLaren v. Whiting*, 16 P. R. Ont. 552; see *Holmested & Langton*, 2nd Ed., p. 95; see also *ib.*, pp. 18 and 19.

The Court will not appoint a receiver except for the purpose of dissolution and winding up the affairs of a partnership. *Lindley*, 6th ed., 532.

CHAPTER II.

PRACTICE IN MANITOBA AND BRITISH COLUMBIA.

Sec. 1. Actions by and against Partnership Firms.

- (a) Plaintiff Firm to Declare Names, etc.
- (b) Partners may Sue and be Sued in Firm Name.
- (c) Service upon Partners.
- (d) Single Person Carrying on Business in Firm Name.
- (e) Execution against Firm.

By the Queen's Bench Act, 58 and 59 Vic., Man., c. 6, s. 26 (b).

In all matters relating to trusts, executors and administrators, co-partnership and accounts, mortgages and awards, or to infants, idiots or lunatics, and their estates, the Court shall have the like jurisdiction and powers as, by the laws of England, were on the 15th of July, 1870, possessed and exercised by the Court of Chancery in England. The following rules are also contained in the same Act.

SEC. 1.—ACTIONS BY AND AGAINST PARTNERSHIP FIRMS.

- (a) *Plaintiff Firm to Declare Names, etc., of Firm.*

MANITOBA.

176. Where a statement of claim is sued out by partners in the name of their firm, the plaintiffs shall on demand in writing by or on behalf of any defendant, declare forthwith in writing the names and places of residence of all the persons constituting the firm.

- (a) And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may upon an application for that purpose be stayed upon such terms as the Court or a Judge may direct.

(b) Where the names of the partners are so declared the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the statement of claim. But all proceedings shall nevertheless continue in the name of the firm.

BRITISH COLUMBIA.

The British Columbia rule 29 corresponds.

(b) *Partners may Sue and be Sued in Firm Name.*

MANITOBA.

228. Any two or more persons claiming or sought to be made liable as co-partners may sue or be sued in the name of the respective firms ; if any of which such persons were co-partners at the time of the accruing of the cause of action; and any party (to an action) may in such case apply to the Court or a Judge for a statement of the names of the persons who were at the time of the accruing of the cause of action co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the judge may direct. Provided that, in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the statement of claim shall be served upon every person sought to be made liable.

This is substantially the same as the Ontario Rule 222, formerly 317, and the English Rule O. 48, *a. r. 1*, formerly before they were amended.

The Ont. Rule (see p. 193) has been amended:—

(1) By inserting after the words "two or more persons" in the first line the words, "whether British subjects or not, or whether residing within or without Ontario."

(2) By inserting after the words "liable as (co-) partners" in the 2nd line the words "and carrying on business within Ontario."

(3) By striking out the proviso at the end of the rule. This proviso has now been placed at the end of Ont. Rule 223 (formerly 265, the rule as to service on partnerships), which corresponds to Man. Rule 191, set out at p. 211.

See note to Ont. Rule 223, p. 199 and *Shepherd v. Hirsch*, 45 Ch. D. 231, p. 234.

BRITISH COLUMBIA.

The British Columbia Rule 104 corresponds.

(c) *Service upon Partners.*

MANITOBA.

191. Where partners are sued in the name of their firm, the statement of claim shall be served either upon any one or more of the partners, or at the principal place within Manitoba of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and subject to the rules hereinafter contained, such service shall be deemed good service upon the firm.

BRITISH COLUMBIA.

The British Columbia Rule 39 corresponds.

In *Russell v. Cambefort*, 23 Q. B. D. 526, i. e. (see p. 196), it was held that when a firm consisted of persons who were not British subjects, and who were resident out of the jurisdiction, though they had a place of business and carried on business within the jurisdiction, they could not be served under the English rule corresponding to this one.

MANITOBA.

In Manitoba, however, they may be served through their agent under Rules 181 and 182, which provide that:

181. Every person who, within the Province of Manitoba, transacts or carries on any business as the general agent for any person or partnership, company or firm not incorporated, or for any corporation, whether domestic or foreign, whose chief place of business or head office is without the said Province, shall, for the purpose of being served with the statements of claim, petitions, orders, writs, papers or other proceedings aforesaid, and every of them, be deemed the agent of such person, partnership, company or firm; and service on such agent of all statements of claim, petitions, orders, writs, papers or other proceedings shall be treated as personal service upon such person, partnership, company, firm or corporation.

182. Every corporation aggregate or partnership company, whether domestic or foreign, and whether the principal or head

office shall be within the Province of Manitoba or elsewhere outside of said Province transacting or carrying on any business within said Province by or through any branch or agency thereof situate within said Province, shall in respect of any matter or thing arising within the said Province be deemed to be and shall be within the jurisdiction of the Courts of the said Province in all attaching or garnishing orders, or other proceedings to the same extent as if the principal or head office were situate and was within the said Province.

Or they may be served substitutionally under rule 178 (2), which provides:

178 (2). It shall be lawful for the Court or Judge on application for that purpose on proper grounds upon such conditions, and in such manner as shall seem just and right under the circumstances to order substitutional or other service of all statements of claim, petitions, papers and proceedings, attaching or garnishing orders, summonses and proceedings, upon all persons, partnerships, associations, companies and firms, and upon all corporations, whether domestic or foreign, and whether domiciled within or without the Province, and upon all persons whether resident within or without the Province; and the service made in pursuance of any such order shall be good and effectual service, and shall have the same effect as though personally effected within the Province; and previous service so made may be homologated by a subsequent order, any statute, usage, custom or law to the contrary thereof notwithstanding.

229. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

Same as the old Ontario Rule 318. Appearance must be entered by such person in his own name. *Taylor v. Cotton*, 30 W. R. 701. He cannot sue in the firm name. See *Mason v. Morgridge*, 8 T. L. R. 805; *Lang v. Thompson*, 16 P. R. (Ont.) 516, and see p. 194 supra.

BRITISH COLUMBIA.

The British Columbia Rule 105 is the same.

(d) Single Person Carrying on Business in Firm Name.

MANITOBA.

192. Where one person carrying on business in the name of a firm apparently consisting of more than one person is sued in the firm name, the statement of claim may be served at the principal place within Manitoba of the business so carried on upon any person having at the time of service the control or management of the business there; and subject to any Rules of Court such service shall be deemed good service on the person so sued.

Same as the old Ontario rule 266. The rule as to actions against a person carrying on business apparently in a firm name is now contained in Ont. Rule 231. See p. 203.

BRITISH COLUMBIA.

The British Columbia Rule 40 corresponds. The concluding words are "And such service if sufficient in other respects shall be deemed good service on the person so served" instead of as in the Manitoba Rule.

(e) Execution against Firm.

MANITOBA.

692. Where a judgment is against partners in the name of the firm, execution may issue in manner following:—

- (a) Against any property of the partners as such;
- (b) Against any person who has admitted on the pleadings that he is, or who has been, adjudged to be a partner;
- (c) Against any person who has been served as a partner with the statement of claim, and has failed to defend.

BRITISH COLUMBIA.

The corresponding British Columbia Rule 465 reads as follows:—

465. Where a judgment or order is against a firm, execution may issue in the manner following:—

- (a) Against any property of the partnership;

(b) Against any person who has appeared in his own name under Order 12, Rule 8 (rule 59 *supra*), or who has admitted on the pleadings that he is or has been adjudged to be a partner.

(c) Against any person who has been served as a partner with the writ of summons, and has failed to appear.

MANITOBA.

693. If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

692 and 693 are the same as the old Ontario Rule 876, which, as amended, now appears as Rule 228. See p. 201.

The judgment must follow the writ, so that if the writ is issued against the firm, and no appearance is entered, judgment cannot be signed against any of the partners individually, even if they have been served with the writ. *Jackson v. Litchfield*, 8 Q. B. D. 474.

The plaintiff is not confined to his remedy by execution under these rules, but may bring fresh actions against the partners individually upon the judgment obtained against the firm. *Clark v. Cullen*, 9 Q. B. D. 355.

BRITISH COLUMBIA.

The British Columbia Rule 465 (latter part) is the same, but the first line reads: "If the party who obtained judgment or an order." The following British Columbia rules have no corresponding rule in Manitoba.

Rule 194 British Columbia.—

If either party wishes to deny the right of any other party to claim as executor or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or

the alleged constitution of any partnership firm, he shall deny the same specifically.

Rule 59 British Columbia.—

Where persons are sued as partners in the name of their firm they shall appear individually in their own names, but all subsequent proceedings shall nevertheless continue in the name of the firm.

Same as Ontario Rule 225.

Rule 60 British Columbia.—

Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall nevertheless continue in the name of the firm.

CHAPTER III.

PRACTICE IN QUEBEC.

Sec. 1. Actions by and against Partnership.

Sec. 2. Service on Partnership.

Sec. 3. Execution.

Sec. 4. Accounting.

SEC. I.—ACTIONS BY AND AGAINST PARTNERSHIP.

C. P. 122 (*in part*).—The writ must state the names, the occupation or quality and the domicile of the plaintiff, and the names and the present or last known residence of the defendant.

Where a partnership is a party to the suit, the full names of the individual partners must be given, their residence, their occupation, if plaintiffs, and the statement that they are carrying on business at a certain place, in partnership, under a firm name, which must also be given. An exception to this rule, however, is contained in the following paragraph of the same article.

C. P. 122 (cont.).—If a commercial partnership, having its principal place of business outside the district, is not registered therein, it may be summoned by its firm name, with mention of the place where such principal place of business is situated; but the judgment rendered against it is then executory only against partnership property.

See also C. C. 1836 and 1837, and remarks thereunder, ante pp. 188 and 189.

The fact that the maker and endorser of a note are described in the writ of summons, as carrying on business together in partnership, does not give to the partnership the right to demand the dismissal of the action on the pretext that it is, itself, a moral being, which is sued for the debt of the

partners individually, when in reality the partners are summoned individually, although composing together such partnership. *Grothé v. Lafleur et al.*, C. R., R. J., 9 C. S. 156.

In an action against a partnership, one of the defendants may set forth, in a plea on the merits, that he is not a member of the defendant partnership, and such allegation will not be rejected as being a matter of exception to the form. *Harvey v. Mowat*, 2 P. R. 212.

When the title of a debt of a dissolved partnership is a judgment, it should be executed in the name of the partnership, but only for the share of the former partner who executes, and the writ of execution should so mention. The partner cannot obtain another judgment specially for his share. C. R., *Crépeau v. Boisvert*, R. J., 13 C. S. 405.

SEC. 2.—SERVICE ON PARTNERSHIP.

C. C. 1838.—The service of summons or process, for any claim or demand founded upon any liability of an existing partnership, at the office or place of business of such partnership within the Province of Canada (Quebec and Ontario), has the same effect as the service made upon the members of such partnership personally.

C. P. 139 declares that service upon a general partnership may be made at its place of business, or, if it has none, upon one of the partners.

The result of these somewhat equivocal provisions is a uniform jurisprudence to the effect that service on a general partnership *must* be made at its place of business, if it has one. If it has none, that fact must be stated in the bailiff's return of a service made upon a partner elsewhere. C. R., *Underwood & Malone*, R. J., 10 C. S. 435, and authorities there cited.

After dissolution, each partner must be served either personally or at his domicile. (1 Pigeau Crivelli, 1837, p. 184.)

SEC. 3.—EXECUTION.

Execution against Partner for Private Debt.

See C. C. 1892 and C. P. 698 and remarks thereunder (ante pp. 96 and 105).

Execution against Partnership.

C. C. 1838 (*in part*).—Any judgment rendered against any member of an existing partnership, for a partnership debt or liability, may be enforced by process of execution against the partnership property in the same manner as if the judgment had been rendered against the partnership.

See also C. C. 1899 (*ante* p. 104).

SEC. 4.—ACCOUNTING.

The obligation of the partners to account to each other is dealt with under article C. C. 1898 (*ante* p. 106). The following articles of the Code of Procedure are given for purposes of reference, as containing general principles. The jurisprudence is not given as being too technical for a work of this character.

C. P. 566.—Every judgment ordering an account must fix a delay for rendering it.

C. P. 567.—The account must be rendered nominately to the party entitled to it; it must be sworn to and be filed in the office of the Court within the delay fixed, together with the vouchers in support of it. The Judge may, however, upon motion, extend the delay for rendering the account.

C. P. 568.—The account must contain, under separate heads, receipt and expenditure, and close with a recapitulation of such receipts of expenditure establishing the balance; whatever remains to be recovered is reserved for a separate head.

C. C. 569.—Under the head of receipts must be placed all sums which the accounting party has received, and all those that he ought to have received during his management.

C. P. 570.—The accounting party cannot place under the head of expenditure the costs of the judgment ordering him to account, unless he is authorized to do so by the Court; but he may charge under that head his travelling expenses, the attendances of the court who made up the account, the costs of preparing, presenting and verifying it, and of whatever copies thereof are required.

C. P. 571.—If the account shows an excess of receipts over expenditure, the party to whom it is rendered may provision-

ally demand execution for the balance, saving his right to contest the remainder of the account.

C. P. 572.—The party accounted to is bound to take communication of the account and vouchers at the office of the court, and to file his contestations of the account, if he contests it, within a delay of fifteen days, which may be extended by the Judge upon application.

C. P. 573.—Parties accounted to, whose interests are the same, must name the same attorney; if they do not agree in their choice, the attorney first in this case remains attorney of record saving the right of the other parties accounted to, to employ attorneys of their own, upon payment of all costs occasioned thereby.

C. P. 574.—The accounting party has a delay of six days after the filing of the contestation to file his answers in support of his account, and the other party has a similar delay to file his replications.

C. P. 575.—In default of filing the contestations, answers or replications within the delay fixed, the party so in default is held to admit whatever is contained in the document he fails to contest.

C. P. 576.—After the issues are completed, the parties proceed to trial in the ordinary manner; but the court may, at any time before judgment, refer the case to arbitrators or to a practitioner or an accountant, according to its nature.

C. P. 577.—The judgment upon the account must contain a computation of the receipts and expenditure, and establish the balance if there is any.

C. P. 578.—If the defendant fails to render an account, the plaintiff may proceed to have one made out in the manner mentioned in Article 568.

RECAPITULATION OF RULES AS TO EFFECT OF DEATH.

As the rules regulating the rights of parties after the death of a partner are contained in different parts of the work, it may be well to recapitulate them here.

We have seen that a partnership is dissolved by death (p. 84); that the estate of a deceased partner is not liable for debts contracted by the partnership after his death (p. 41); that when a partnership is continued in the old firm name, even if it be the name of the deceased partner, his representatives do not, by reason of such continued use of his name, become liable for the debts incurred after the death (p. 38). But the Act as to registration of co-partnerships requires that a declaration should be filed when and so often as any change takes place in the membership of the partnership; see p. 168.

We have also seen (p. 44) that his estate is jointly liable for the debts of the partnership due at his death, and also severally in a due course of administration, but subject to the prior payment of his separate debts, and also that the representative is entitled to apply to the Court to have the partnership affairs wound up, and the property of the partnership applied first in payment of the debts and liabilities of the firm, and second, in payment of what may be due to the partners respectively after the deducting what may be due to them as partners to the firm (p. 90).

It will readily be seen, however, that such a winding up may mean a serious sacrifice of the property of the beneficiaries. Consequently, the representative often carries on the business in order to avoid such sacrifice; and, as has been frequently said, a representative who does this finds himself in an unenviable position, because, while he cannot benefit by any profit made, he may find that he is held responsible for losses sustained. The representative in such a case may be carrying on the business properly, *i.e.*, under authority conferred upon him, or improperly, *i.e.*, without authority.

And, moreover, he may be carrying it on properly with respect both to the beneficiaries and creditors, or properly with respect to beneficiaries and improperly with respect to creditors, or *vice versa*.

If the representative carries on the business, there being no direction in the will or partnership articles authorizing him to do so, then, if any loss is sustained, he is bound to make it good out of his own pocket both to the beneficiaries and the creditors. If, however, there is a direction in the will or in the partnership articles authorizing him to carry on the business, then he is entitled to be indemnified out of the testator's estate as against the beneficiaries, but not as against the creditors of the testator. If, however, the creditors of testator acquiesce in the carrying on of the business by the representative, he will be entitled to be indemnified as against them also. *Dowse v. Gorton*, 1891, A. C. 190. Even if there is no direction but the business is carried on for the benefit and with the consent of the beneficiaries and creditors, the representative will be entitled to be indemnified. In *re Brooke*, *Brooke v. Brooke*, 1894, 2 Ch. 600. And the assent may be express or implied from a course of dealing (*ib*). In any event, however, the representative should continue a business for the purpose of carrying out a contract entered into by the deceased and not completed, and he should also continue it for a reasonable time, if it should be necessary to do so for the purpose of disposing of it to advantage. *Williams Exors.*, 9th Ed., 1689.

A creditor may be either a creditor of the deceased or a creditor of the continued business. Speaking generally, a creditor of the deceased is entitled to look to the estate of the deceased and to call the representative to account for any waste thereof, while a creditor of the continued business is entitled to look to the representative only, and the representative is personally responsible for debts so incurred. If, however, the representative carries on the business with the

consent and for the benefit of the creditors of the deceased then if there be a loss the representative and consequently his creditors, *i.e.*, the creditors of the continued business, are entitled to be indemnified out of the assets of the deceased. *Exp. Garland*, 10 Ves. 120; *Exp. Edmonds*, 4 D. F. & J. 488, p. 498.

In dealing with a firm, when one of the partners has died and the representative is carrying on the business, the question often presents itself as to whether such course will discharge the estate of the deceased partner. This really resolves itself into the question as to whether or not such course of dealing will amount to novation. See ante, p. 48. If the creditor wishes to hold the estate of the deceased partner, he should be careful to do nothing which will amount to an election to accept the liability of the firm as reconstituted in substitution for the original liability. This can generally be accomplished by reserving his rights against the estate of the deceased partner in his dealings with the new firm. The mere fact that a creditor continues dealing with the new firm will not, however, amount to a discharge of the deceased partner's estate. *Devaynes v. Noble*, 1 Mer. 568, 586. *Gough v. Davies*, 4 Price 200. See *Lindley Act* 45.

The beneficiaries of the estate of a deceased partner are entitled to elect whether they will take profits or interest when the continuing partners have carried on the business with the assets or capital of the deceased partner's estate (p. 88), and the amount due to the estate of a deceased partner is a debt accruing at the date of the death (p. 89). The rules as to administration of assets on the death of a partner will be found at p. 116. When a partnership has been dissolved by death, any benefit derived from any transaction concerning the partnership, or from any use of the partnership property either by the continuing partners or the representative of the deceased, must be accounted for (p. 70).

APPENDIX.

ARTICLES OF PARTNERSHIP

Between Two Traders.

Articles of Agreement made the day of
between (A. B.), of, etc., of the one part, and (C. D.), of, etc.,
of the other part, whereby it is agreed that:—

1. The parties shall become and be partners under the firm
of "(B. & D.)," in the business of , for years
from the day of , 19 , or until the expiration of
 months' notice in writing to determine the partnership
left by either partner for the other at their place of busi-
ness, at any time after the day of , 19

2. The business shall be carried on in the messuage or shop
No. in Street, or such other place as the partners
shall hereafter agree on.

3. The capital of the partnership shall be the sum of \$
to be contributed by the said (A. B.) and (C. D.) in equal
shares.

4. The profits and losses shall belong to and be borne by
the said (A. B.) and (C. D.) in equal shares.

5. The said (A. B.) may draw out of the profits, money not
exceeding \$ each month, and the said (C. D.) may draw
out of the profits, money not exceeding \$ in each
month.

6. The said (A. B.) by whom the said messuage or shop and
premises in which the business is carried on are held during
the residue of a term of years from the day of ,
granted by a lease dated, etc., at a rent of \$, shall hold the
premises in trust for the partnership, and shall be indem-
nified by the partnership from the said rent, and from
the lessee's covenants and conditions of the lease, and
shall be credited in the partnership books with the sum of
\$ (being the agreed value of the lease) as part of his
contribution to capital.

7. The said rent, and all taxes, rates, repairs, and outgoings, in respect of the said messuage and shop, or other partnership place of business for the time being, or of the business, shall be paid out of the profits, or in case of deficiency of profits, then by the partners equally.

8. No apprentice, clerk, or servant, shall be taken, employed, or dismissed, without the consent of both partners.

9. All premiums and fees taken with apprentices, or the like, shall be part of the profits.

10. The partners respectively shall cause all usual accounts and entries to be kept and made in proper books; and all securities and vouchers shall be kept at the place of business, or at the bankers of the partnership, and be open to the inspection of each partner.

11. Immediately after each day of in every year, the partners shall take an account and valuation of the effects, credits, and liabilities of the partnership, to be forthwith entered in two books, to be signed by the partners, each of whom is to retain one. The entries in such books shall be conclusive, except only as to such errors to the amount of \$ as shall be complained of within months from such signing. The profits shall be divided as aforesaid, after the making up of such account.

12. No partner shall purchase goods to the amount of \$ without the previous consent of the other in writing.

13. Either partner dealing with, or giving credit of goods or money to, any person after request to the contrary by the other, shall immediately pay to the other the full value or amount of such goods or money as liquidated damages.

14. Neither partner shall, without the consent of the other, compound or discharge any liability to the partnership, or otherwise discharge or diminish any security to the partnership, or engage the partnership name on any negotiable or other security, or for any debt, otherwise than in the usual course of business, or make himself liable as bail or surety for any person or on any accommodation bill or note, or policy of insurance, or enter into any wagering contract, or

assign his share or interest in the partnership, or withdraw his share in the capital, or expose the partnership effects to the danger of being taken in execution, or be concerned out of the partnership in the business of .

15. If either partner shall infringe any of the clauses numbered 8, 10, 11, 12, 13 and 14 respectively, or become insane, or enter into any arrangement or composition for the benefit of his creditors, or shall (without the consent of the other partner) make any assignment, either absolutely or by way of mortgage, or declaration of trust of his share and interest in the partnership, or any part thereof, the other partner may forthwith determine the partnership by notice in writing, left at the place of business and may thenceforth continue the business alone, and may advertise notice of the dissolution in the , and, if necessary, sign the name of the infringing partner to such notice of dissolution.

16. On the death or bankruptcy of either partner, or on notice being given to either partner under clause 15, or by either partner under clause 1, his share in the effects may be purchased by the other at a valuation to be made by arbitrators or their umpire, as hereinafter mentioned. The price shall be paid by three equal instalments at the respective periods of six, twelve and eighteen calendar months from such death. The payment of such instalments, with interest at the rate of \$ per centum per annum for so much of the said price as shall for the time being remain unpaid at the date of payment of each such instalment, and also the indemnity of the retiring partner, or of the executors or administrators of the deceased partner, shall be secured by the purchaser's bond; and if the said (B.) shall be the purchaser, he may, at his option, cause the lease of the said messuage at to be included in such valuation and purchase. And, on such purchase, the share of the retiring or deceased partner in the profits, up to the day of dissolution, shall be ascertained and paid by the other forthwith.

17. Upon the determination of the partnership by effluxion of time, or upon its determination by any means, if the option given by the last preceding clause shall not have arisen or been

exercised, then, as soon as conveniently may be, a full and general account and valuation shall be taken of the property, assets, and liabilities of the partnership, and the property and assets shall be sold and realized, and the debts due to the partnership shall be collected and got in, and the moneys arising thereby shall be applied in the first place in discharge of the liabilities of the partnership, and the expenses of and incident to the taking of the said account and valuation, and of and incident to such sale, realization, and getting in as aforesaid, and in the next place in payment to each partner, or his representatives, of any unpaid profits due to him or them, and repayment of his or their share of capital, and the residue (if any) shall be divided between the partners, or their representatives, in equal shares; and the partners, or their representatives, shall execute and do all such instruments and things for carrying out the realization and division of the partnership assets, and particularly will execute such mutual indemnities and releases as may be reasonable and proper: Provided always, that if the proceeds of the realization shall not be sufficient, after the discharge of the liabilities of the partnership, and of such expenses as aforesaid, and the payment of any such unpaid profits as aforesaid, to repay to the partners, or their representatives, their respective shares of capital in full, then such shares shall be repaid rateably so far as such proceeds shall extend, and neither partner nor his representatives shall have any claim on the other partner, or his representatives, in respect of the deficiency.

18. If at any time any dispute, doubt or question shall arise between the said partners, or their respective executors or administrators, either on the construction of these presents, or respecting the accounts, transactions, profits, or losses of the business, or otherwise in relation to the partnership, then every such dispute, doubt or question shall be referred to two arbitrators, or their umpire, to be appointed in the usual way, and such reference shall in all respects, as to the mode and consequences thereof, conform to the provisions in that behalf contained in the R. S. O. c. 62, or any statutory modi-

fication thereof for the time being subsisting ; and so that this submission and the award may be made a rule or order of Court, on the application of either party to the reference.

In witness, etc.

ARTICLES OF PARTNERSHIP

Between Three Traders, with ordinary Clauses.

This Indenture made the day of , 19 , between (A.B.), of, etc., of the first part; (C. D.), of etc. of the second part; and (E. F.), of, etc., of the third part; witnesseth, that each of them, the said (A.B.), (C. D.), and (E. F.), (so far as the covenants, stipulations, and provisions hereinafter contained are to be observed and performed by him, his executors or administrators) hereby covenants with the others of them jointly and severally in manner following, that is to say :—

1. The said (A.B.), (C. D.), and (E. F.), and the survivors of them, shall become and henceforth continue partners in the trade or business of , for the term of seven years from the day of the date of these presents, if the said partners or any two of them shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

2. The said business shall be carried on under the style or firm of "(B.) and (Co.)," in the messuage belonging to the said (A. B.), in Street, in the city of , or in such other place of business as the said partners shall from time to time agree upon.

3. If on or at any time after the day of , 19 , any partner shall be desirous of retiring from the partnership, he shall be at liberty to give to the other partners or partner, or to leave for them or him at the place where the business shall for the time being be carried on, notice in writing of such his desire and of his intention to determine the partnership so far as he is concerned. And the partnership shall, at the expiration of six months after the giving or leaving of such notice, determine accordingly, as regards the partner giving

such notice, subject nevertheless to the provisions contained in clause 25 of these presents.

4. If any of the said partners shall at any time become insane, or become insolvent, or make or enter into any arrangement or composition with his creditors, whether statutory or otherwise, or shall knowingly do, permit, or omit any act or thing contrary to any of the covenants, stipulations, and provisions herein contained, or if he shall (except with the consent of the other partners or partner, or by reason of sickness or physical injury), absent himself from business for more than days at any one time, or more than days in any one year: Then, and in any of the said cases, the other partners or partner, if they or he shall think fit, shall be at liberty to give to the insane partner, or his committee, or to the partner who shall offend in any of the particulars afore-said (as the case may require), or leave at the place where the business shall for the time being be carried on, a notice in writing desiring him to retire from the partnership, and declaring the partnership to be dissolved and determined: And the partnership shall, from the time of giving or leaving such notice, or from any other time to be therein specified for the purpose, determine accordingly as regards the partner to or for whom such notice shall be given or left, subject nevertheless to the provisions contained in clause 25 of these presents, and also subject and without prejudice to the remedies of the respective partners for the breach or non-observance or non-performance of all or any of the covenants, stipulations, and provisions herein contained.

5. If the partnership shall be determined by notice under either of the preceding articles, the partner giving such notice shall be at liberty to cause a proper notice of the dissolution of the said partnership to be advertised in the , and may, if necessary, sign the name of the partner to whom the said notice shall have been given to such advertisement or notice of dissolution.

6. The capital of the partnership shall be the sum of \$, to be contributed by the said partners in the following proportions, namely, the sum of \$, being two-fourths thereof,

by the said (A. B.); the sum of \$, being one other fourth thereof, by the said (C. D.), and the sum of \$, being the remaining fourth thereof, by the said (E. F.): And they shall respectively be considered as creditors of the partnership in respect of such capital, and shall be allowed interest for the same, after the rate of per centum per annum.

7. The said partners shall be entitled to the net profits of the said business in the proportions following, namely, the said (A. B.) to two-fourth parts; the said (C. D.) to one-other fourth part; and the said (E. F.) to the remaining one-fourth part thereof: And all losses happening in the course of the said business shall be borne by the said partners in the same proportions, unless the same shall be occasioned by the wilful breach of any covenant, stipulation, or provision herein contained, or other neglect or default on the part of either of the said partners, in which case the same shall be made good by the partner through whose breach, neglect, or default the same shall arise.

8. The said (A. B.) shall be allowed by the partnership the clear yearly sum of \$ by way of rent for the messuage in Street aforesaid, so long as the said business shall be carried on therein, but the said messuage shall continue the sole property of the said (A. B.), subject only to be used for the purposes of the partnership business.

9. As well the said rent as all taxes, rates, assessments, and other outgoings, which shall become payable in respect of the messuage wherein the said business shall be carried on, the costs of insuring the same, and the stock in trade and fixtures belonging to the partnership from loss or damage by fire, and the expense of providing heat and light and of paying the salaries and wages of clerks, porters, and servants to be employed in the said business, and of travelling, and all other disbursements and expenses which may be incurred by the partners respectively in the course of the said business, shall be paid out of the profits of the business, or in case of a deficiency of profits, then by the said partners in the proportions in which they shall be respectively entitled to the net profits of the business.

10. The bankers of the partnership shall be the Bank or such other bankers as the partners shall from time to time agree upon; and all partnership moneys (not required for current expenses) shall be paid into the account of the firm at the said bank at the end of every day. Each partner shall be at liberty to draw on the partnership account, but only for the purposes of the partnership, or for the purposes mentioned in the next clause hereof, and only by drafts or cheques upon such bankers in the firm name.

11. The partners shall be at liberty, from time to time, to draw out of the said business, for their own use respectively, any sum or sums not exceeding the sums following, that is to say: the said (A. B.) the sum of \$ per month; the said (C. D.) the sum of \$ per month; and the said (E. F.) the sum of \$ per month; such sums to be duly accounted for by them respectively on the taking of every such general annual account as hereinafter directed; and any partner whose drawings shall, on the taking of such account, be found to exceed his share of the net profits and interest on capital accrued to him for the previous year, shall forthwith refund the difference.

12. No apprentice, clerk or servant, shall be taken or engaged, or be employed in or about, or dismissed from, the said business, by any of the partners without the consent of the others of them.

13. All premiums and apprentice-fees, to be paid with any apprentice or other person to be received into the said business, shall be considered as part of the profits of the said business, and be divided accordingly.

14. The partners shall be true and just to each other in all their transactions and dealings, and shall, at all times during the continuance of the partnership, diligently and faithfully employ themselves in the conduct and management of the said business, and the concerns of the partnership.

15. Every partner shall forthwith inform the other partners of all letters, accounts, writings, proposals, matters and things, which shall have come into his hands or knowledge touching the partnership business.

16. None of the partners shall, during the continuance of the partnership, without the consent of the other of them, either separately or in partnership with any other person, engage in or carry on, or be concerned or interested, directly or indirectly, in the trade or business of _____, nor engage in or carry on any other trade or business, nor become nor be a director of any joint-stock company.

17. None of the partners shall transact any business, or enter into any contract or agreement with, or give credit to, or lend or advance any money out of the partnership funds to any person, company, or corporation, after he shall be requested by the other partners not to do the same.

18. None of the partners, without the consent of the others of them, shall compound, release, or discharge any debt or duty which shall be due or owing to the partnership, without receiving the full amount thereof; nor sign any instrument, whereby any debt or security shall be in anywise discharged, vacated, or diminished.

19. None of the said partners, without the consent of the others of them, shall draw, accept, or sign any bill of exchange or promissory note, or contract any debt on account of the said partnership, or employ any of the moneys or effects of the partnership, or in any way pledge the credit thereof except in the usual and regular course of business.

20. None of the said partners shall, without the previous consent in writing of the others of them, become bail, surety, or security for any person or persons (or draw, indorse, or accept any accommodation bill or note, or underwrite any policy of insurance, or make or enter into any time-bargain for the sale or purchase of stock in any government security, or expose himself to any other risk or hazard in any gaming transaction).

21. None of the partners shall, without the previous consent in writing of the others of them, make any assignment, either absolutely or by way of mortgage, or any declaration of trust of his share or interest in the said partnership, or any part thereof, or withdraw his share of the capital therein or any part thereof.

22. None of the partners shall knowingly do or permit anything whereby the moneys or effects of the partnership shall be seized, attached, extended, or taken in execution.

23. The partners respectively shall keep or cause to be kept, proper books of account, wherein shall be entered all moneys received and paid, and all contracts entered into, and all business transacted on account of the partnership, and all other matters and things of which accounts ought to be kept, according to the usual and regular course of the said business, and which books of account, together with all deeds, securities for money, letters, and papers belonging to the partnership (except such as shall be kept with the bankers of the partnership), shall be kept at the place where the said business shall be carried on, and shall, at all reasonable times, be open to the inspection of all the partners.

24. As soon as conveniently may be after the day of , in every year during the partnership, a general account in writing shall be made and taken by the partners of all the moneys, credits, property and effects, and of the debts and liabilities of the partnership; and of all contracts entered into, and all business transacted on account of the partnership during the then preceding year, and of all other matters and things usually included in such accounts, among persons engaged in the trade or business of ; and such account shall be entered in three books, to be respectively signed by the partners, and after such signature, each of the partners shall take one of the said books, and they shall be bound thereby, unless some manifest error shall appear therein within the space of calendar months next after the making up of such account, and be notified by any of the partners to the others of them within that time; and in such case only such error shall be rectified: And on the making up of every such yearly account, all interest which shall become due to the said (A. B.), (C. D.), or (E. F.), for such sum or sums of money as they shall respectively advance and bring into the said partnership, and the yearly allowance of \$ to the said (A. B.), for rent, shall, in the first place, be deducted, and the residue of the clear profits of the said business which shall

have accrued or been gained in the preceding year, shall be divided amongst the partners in the proportions aforesaid.

25. In case of the death or bankruptcy of any of the said partners before the expiration of the partnership term, or if any notice of retirement shall be given by any partner under clauses 3 or 4, then the surviving or other partners or partner (if only one such partner) may, if they or he shall think fit, elect to continue the partnership business, and in that case each surviving or continuing partners or partner shall, within the space of six calendar months next after such death, bankruptcy, or retirement as aforesaid, settle and adjust with the representative or representatives of the deceased partner, or with the trustee of the bankrupt partner, or with the retiring partner or his committee, as the case may require, all accounts, matters, and things relating to the partnership; and for the purpose of such settlement and adjustment the value of the share of the deceased, or bankrupt, or retiring partner of and in the property and assets, including the goodwill of the partnership, shall be ascertained by two indifferent persons, one to be chosen by the surviving or continuing partner or partners, and the other by the representatives or representative of the deceased partner, or the trustee of the bankrupt partner, or the retiring partner or his committee, as the case may require, or, in case of difference between such valuers, then by their umpire, to be chosen in the usual manner; and the surviving or continuing partners or partner shall thereupon purchase the said share at such valuation, and shall enter into a bond in a sufficient penalty for securing the amount of such valuation to the person or persons entitled thereto, by three equal instalments, at the respective periods of six, twelve, and eighteen calendar months next after the date of such death, bankruptcy, or retirement as aforesaid, with interest as from that date at the rate of per cent. per annum for so much of the said amount as shall for the time being remain unpaid at the date of payment of each instalment: And also a bond for indemnifying the estate and effects of the deceased, or bankrupt, or retiring partner against the debts and liabilities of the partnership, on having

a proper assignment or assurance executed for vesting in the surviving or continuing partners or partner the share of the deceased, or bankrupt, or retiring partner, and enabling such surviving or continuing partners or partner to collect and get in all the assets of and debts due to the partnership

26. For the purposes of valuation, the goodwill of the partnership shall be deemed to be equal to three years' purchase of the average net yearly profits of the said business for the last preceding years, or for the period which shall have elapsed from the commencement of the partnership if less than years.

27. In case the said (A. B.), shall die before the expiration of the partnership term, then the surviving partners or partner (if only one) shall have the option of purchasing from his representative or representatives the messuage in street, , aforesaid, where the business is now carried on, at the price of \$, provided that the surviving partners or partner signify in writing their or his intention of purchasing the said messuage to the representative or representatives of the said (A. B.) within three calendar months after his death; and in such case the surviving partners or partner shall be entitled to an assignment (to be prepared at their or his expense) of the lease of the same premises for the residue which shall then be unexpired of the said term, subject to the rent and to the lessee's covenants reserved by and contained in the said lease.

28. No retiring partner shall during the unexpired residue of the partnership term, commence, or carry on, or engage or be interested, directly or indirectly, in the trade or business of , at aforesaid or within a distance of miles therefrom.

29. Proviso for winding up the business on the termination of the partnership, vide ante p. 225, clause 17, mutatis mutandis.

30. In all matters relating to the management and conduct of the partnership business, notwithstanding anything herein contained to the contrary, the decision of a majority (in value) of the partners shall be conclusive and bind all the partners.

31. Subject to the provision contained in the last preceding clause, if at any time any dispute, etc., (continue at p. 226, clause 18 of preceding form).

In witness, etc.

ARTICLES OF PARTNERSHIP

Between a Patentee and a person who contributes the capital.

This Indenture, made, etc., between (A. B.), of, etc., of the one part; and (C. D.) of, etc., of the other part: Whereas a patent under the seal of the Patent Office, dated the day of this present month of , for the manufacture of a certain machine, invented by the said (A. B.), intituled (" "), has been granted to him for the term of years, from the date thereof: And whereas the said (A. B.) and (C. D.) have agreed to become partners for the purposes, and subject to the covenants and provisions hereinafter contained: And whereas the said (A. B.) and (C. D.) have defrayed the expenses of obtaining the said patent in equal moieties: Now this Indenture witnesseth, that each of them, the said (A. B.) and (C. D.) hereby covenants with the other of them in manner following (namely):—

1. The said (A. B. and C. D.) shall be partners in the business of manufacturing and selling the said machines, pursuant to the said patent, for the said term of years, granted by the said letters patent, and for any future term for which the said patent may be extended.

2. The partnership business shall be carried on under the firm of (B. and D.) at aforesaid, or at such other place or places as the said partners shall mutually agree upon.

3. The patent right shall be considered as part of the partnership property, and to have been brought into the business as capital by the said (A. B.); and no share or interest therein, or license to use the same, shall be sold, granted or assigned to any person or persons, without the consent of both the partners; and all moneys, benefits, and advantages to accrue from any such sale, grant, assignment, or license, shall be divisible

between the partners in the same proportions as the profits of the business are hereinafter directed to be divided. The said patent right shall for the purposes of the business, and of any accounts in relation thereto, be taken to be of the value of \$ at the date of these presents, and to become depreciated in value at the rate of \$ every half-year.

4. The said (C. D.) shall immediately bring into the business the sum of \$ as capital, and shall continue to employ the same in the said business, and for the benefit of the partnership, during the partnership term, without any allowance of interest for the same; and shall, from time to time, at the request of the said (A. B.) advance and bring into the said business such further sums of money (not exceeding the sum of \$ in any one year, nor exceeding, together with the said sum of \$, the total sum of \$), as shall in the opinion of the said (A. B.) be required for carrying on the same business, being allowed interest on such further advances of per centum per annum out of the profits of the said business, before any division of such profits.

5. The said (C. D.) shall not withdraw the said capital, or sum of \$, or any such further advances as aforesaid, or any part thereof respectively, without the consent in writing of the said (A. B.) first obtained for that purpose.

6. The net profits of the said partnership (after paying there-out the several outgoings and expenses mentioned in clause 11 hereof, and after deducting the interest hereinbefore agreed to be allowed to the said (C. D.), on his further advances of capital), shall, during the first seven years of the said term of years, be divided into three equal shares, whereof two shall belong to and be taken by the said (A. B.), and the other by the said (C. D.); and shall during the remainder of the said term, be divided between the said parties in equal moieties. But all losses, at any time incurred in or about the carrying on of the partnership business, shall be borne by the partners in equal shares.

7. (Clause as to bankers and drawing on the partnership account at ante p. 230.) See 10, preceding form.

8. (Clause as to monthly drawings, at ante p. 230.) See 11.

9. (Clause as to taking and engaging apprentices and servants, etc., at ante p. 230.) See 12.

10. (Clause as to apprentice-fees, at ante, p. 230.) See 13.

11. The rent of any workshops, buildings, or lands where the said business shall be carried on, and the costs of all additions to and alterations and repairs of the same, and of purchasing and keeping up machinery, utensils, and plant, which may be necessary or proper for carrying on the said business, and all taxes, rates, assessments, insurance premiums, and other outgoings payable in respect of the premises, or of the said business, and the salaries and wages of clerks, workmen and servants, and the expenses of travelling of the partners or their agents on account of the partnership, shall be paid out of the profits of the business, or in case of a deficiency of profit then by the partners in equal shares.

12. The said (A. B.) shall at all times, during the continuance of the partnership, diligently and faithfully employ himself in the conduct and management of the said business, and in the concerns of the partnership, unless he shall be prevented by sickness or other reasonable cause of excuse arising without his own default; but the said (C. D.) shall not be obliged to attend to the said business, except so far as he shall think proper so to do.

13. (Here insert from the preceding precedents, any clause or clauses which may be required, with regard to the duties of the partners, and the conduct and management of the business.)

14. Neither partner shall, during the continuance of the partnership, nor for years after its determination, by any means, without the consent in writing of the other of them, or of his executors or administrators, divulge to any person not a member of the firm any trade secret, method of manufacture, or special information, employed in or conducive to the partnership business, and which may come to his knowledge in the course of, or by reason of this partnership.

15. (Expulsion clause, at ante p. 225). See 4, preceding form.

16. If the said (C. D.) shall die during the continuance of the partnership, his executors or administrators shall have the op-

tion of succeeding to his share in the partnership business and effects, upon giving notice of such intention, within calendar months after his death, provided they shall forthwith do and execute all such acts and deeds as shall be requisite to subject them to the same liabilities and conditions as the deceased was subject to in respect or by reason of the partnership; But, in such case, the said (A. B.) shall alone conduct and manage the said business, and the said executors or administrators shall not be at liberty to intermeddle or interfere in the conduct and management of the partnership concerns, unless expressly requested so to do by the said (A. B.), otherwise than by inspecting the books of account belonging to the partnership, and examining into the state of the business, or by assisting in making up and settling the half-yearly general accounts in manner hereinbefore directed. Provided always, that so long as the said (A. B.) shall conduct and manage the said business on behalf and for the benefit of himself and the executors or administrators of the deceased partner, he shall be entitled to deduct and retain out of the profits of the business, before any division thereof, the yearly sum of \$ by equal quarterly payments, as a compensation or salary for his trouble in conducting and managing the same.

17. In case either of the said partners shall retire from the said partnership, pursuant to the fifteenth article hereof, or in case either of the said partners shall die during the continuance of the said partnership, and in case the partner so dying shall be the said (C. D.), then, if his executors or administrators shall decline or neglect to avail themselves of the option given to them by the article lastly hereinbefore contained, then the continuing or surviving partner (as the case may be) shall, within the space of calendar months next thereafter, settle and adjust with the retiring partner, or the representatives of the deceased partner (as the case may be) all accounts, matters, and things relating to the partnership; and the amount of the share of the retiring or deceased partner (as the case may be) in the credits and effects of the partnership, shall be ascertained by valuation to be made by two indifferent persons, one to be nominated by the continuing or surviving partner and the

other by the retiring partner, or the executors or administrators of the deceased partner (as the case may be), with power to choose an umpire in case of their not agreeing in their opinion; And thereupon it shall be obligatory upon the surviving or continuing partner to purchase, and he shall accordingly purchase the said share at the price or value to be ascertained as aforesaid, and enter into any bond or bonds in a sufficient penalty or penalties for securing to the retiring partner, or the representatives of the deceased partner (as the case may be), the amount of the price or value of such share, by equal instalments, with interest at the rate of per centum per annum at the respective periods of six, twelve and eighteen calendar months next after either of the said partners shall retire or die as aforesaid; and also a bond or bonds for indemnifying the estate and effects of the retiring or deceased partner (as the case may be) against the debts and demands due or owing by or from the said partnership, on having a proper assignment or assurance, or assignments or assurances, executed for vesting in the continuing or surviving partner (as the case may be) all credits and effects due, owing, and belonging to the partnership, and enabling such continuing or surviving partner to collect and get in the same.

In witness, etc.

DEED OF ASSIGNMENT

(Indorsed on or annexed to Articles of Partnership) by one Partner, with the consent of the others, of a Moiety of his Share to a Third Person, who is admitted into the Partnership.

This Indenture, made the day of , between the within-named (or above-named) (A. B.), of the first part; the within-named (or above-named) (C. D.) and (E. F.), of the second part, and (G. H.), of the third part; Whereas the said (A. B.), (C. D.) and (E. F.), from the period of the date and execution of the within written (or above-written) indenture, down to the present time, have carried on the business of dry goods merchants in partnership, pursuant to the covenants and agreements contained in the within-written (or above-written)

indenture: And whereas the said (A. B.), with the privity and consent of the said (C. D.) and (E. F.), has contracted with the said (G. H.) for the absolute sale to him of one moiety of his the said (A. B.'s) one-third share of and in the good-will, property, and effects of the said partnership (except the credits thereof) for the price of \$; and it has been agreed that such moiety shall be assigned to and vested in the said (G. H.) in manner hereinafter expressed; and that the said several parties hereto shall enter into the covenants hereinafter contained.

Now this Indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the premises, and also in consideration of the sum of \$ now paid by the said (G. H.) to the said (A. B.), the receipt of which sum of \$ the said (A. B.) hereby acknowledges, the said (A. B.) (with the privity and consent of the said (C. D.) and (E. F.)), testified by their severally executing these presents) assigns, and as beneficial owner conveys, unto the said (G. H.), his executors, administrators, and assigns, all that one undivided moiety or equal half, part of the one-third part or share of him the said (A. B.) of and in the goodwill of the said partnership business, and the profits henceforth to arise therefrom, and of and in the capital, property, stock and effects of the said partnership (except the credits and sums of money owing to the said partnership, and all securities for the same); To hold the same unto the said (G. H.), his executors, administrators and assigns absolutely; And this indenture also witnesseth that in further pursuance of the said agreement, and in consideration of the premises, they, the said (C. D.), and (E. F.), at the request of the said (A. B.), hereby admit the said (G. H.) into the said partnership established by the within-written (or above-written) indenture, as an acting partner therein, in respect of the one moiety hereby assigned of the one-third share of the said (A. B.) in the said partnership business as aforesaid; And each of them the said (A. B.), (C. D.), (E. F.), and (G. H.), hereby covenants with the others and each other of them, that they the said (A. B.), (C. D.), (E. F.), and (G. H.), will henceforth become and

continue partners in the business of dry goods merchants for all the residue now unexpired of the said term of years mentioned in the within-written (or above-written) indenture, under and subject to the provisions and stipulations contained in the said indenture; and will at all times hereafter faithfully perform and observe all and every the covenants, provisions and agreements contained in the said indenture, so far as the same are now subsisting and capable of taking effect; and that the several rights, shares and interests of the said respective parties, of and in the partnership property, profits, and effects, held and enjoyed by the said parties respectively, under and by virtue of the within-written (or above-written) indenture, and of these presents, or either of them, shall be subject and liable to the provisions of the said indenture, as fully and effectually, to all intents and purposes, as if the same had been incorporated with and inserted in these presents.

In witness, etc.

MEMORANDUM OF AGREEMENT,

On admission into a Firm of a new Partner, who brings in additional capital (to be annexed to the Articles).

Memorandum of Agreement, made the day of , 19 , between the above-named (A. B.) and (C. D.) of the one part; and (E. F.) of, etc., of the other part; Whereby, in consideration of the sum of \$, now brought in and contributed by the said (E. F.) as additional capital of the above-mentioned partnership, it is hereby agreed as follows:—

1. The parties hereto shall, as from the date hereof be and continue partners for the unexpired residue of the above-mentioned term, subject in all respects to the conditions, stipulations, and provisions of the above-written articles, so far as applicable, and except as varied by the present agreement.

2. The capital of the partnership shall be deemed to be the sum of \$, and to have been contributed by the parties hereto in the shares and proportions following, that is to say, two equal fifth shares by the said (A. B.), two other equal

fifth shares by the said (C. D.), and the remaining one equal fifth share by the said (E. F.).

3. The profits and losses shall belong to and be borne by the parties hereto in proportion to their respective shares.

4. The said (A. B.) and (C. D.) may draw out of the profits the sums mentioned in the above-written articles; and the said (E. F.) may draw out of the profits money not exceeding \$ in each month.

5. (Add any restriction as to the rights and powers of the new partner, or stipulation as to other matters, which may be agreed upon.)

In witness, etc.

DEED OF DISSOLUTION OF PARTNERSHIP

between three, where one Partner retires and receives a sum of money (secured by the promissory notes of the continuing partners, for his share.

This Indenture, made the day of , 19 , between (A. B.), of, etc., of the one part; and (C. D.), of, etc., and (E. F.), of, etc., of the other part: Whereas the parties hereto have for some time carried on the trade or business of in partnership, under articles of partnership dated the day of , 19 , whereby they are interested in the partnership property in equal shares: And whereas the said parties hereto are possessed, as part of the partnership property of the several leasehold properties specified in the schedule hereunder written and of certain fixed and moveable machinery, fixtures, and plant; and the partnership property also includes the moneys, stock-in-trade, materials, good-will and effects used in or belonging to, and of debts owing to the parties hereto, as such partners as aforesaid; and whereas the said parties hereto have agreed to dissolve the said partnership, so far as relates to the said (A. B.), as from the day of next, and notice of such dissolution has been signed by them respectively in order to its being inserted in the ; and it has been agreed that the said trade or business shall as from and after that

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day be carried on by the said (C. D.) and (E. F.), in partnership without the said (A. B.); and that they shall have for their own use and benefit all the third equal part or share and interest of the said (A. B.) of, and in the said business and the partnership property aforesaid, and that they the said (C. D.) and (E. F.) shall take upon themselves all the debts and liabilities of the partnership which were outstanding on the said day of , 19 , and shall pay to the said (A. B.) the net value of his share as it stood on that day: And whereas a general account and valuation have been taken and made of the property, assets, and goodwill, and liabilities of the partnership, whereby it appears that the net value of the share of the said (A. B.), as it stood on that day, after providing for the liabilities of the partnership then outstanding is of the sum of \$, and it has been agreed that the payment thereof by such instalments as are hereinafter mentioned shall be secured by the promissory notes of the said (C. D.) and (E. F.) in manner hereinafter appearing; and that thereupon the said (A. B.) shall assign to the said (C. D.) and (E. F.) all the share and interest of him the said (A. B.) of and in the property, assets, and goodwill of the partnership: And whereas the said (C. D.) and (E. F.) have also agreed to indemnify the said (A. B.) against the debts and liabilities due or owing from the partnership in manner hereinafter mentioned: Now this Indenture witnesseth, that, in pursuance and part performance of the hereinbefore recited agreements, and in consideration of the premises, they the said parties hereto hereby declare that the said partnership between them shall be determined and stand dissolved as from the said day of 19 , and that the same and the hereinbefore mentioned articles of partnership and every clause and thing therein contained shall henceforth cease and be void. And this Indenture also witnesseth, that, in pursuance and further performance of the hereinbefore mentioned agreements, and in consideration of the sum of \$ being the amount so agreed to be paid to the said (A. B.) for or in respect of the property, assets, and goodwill of the said business) to the said (A. B.) now paid, or to the satisfaction of the said (A. B.) secured to be paid to him

by the said (C. D.) and (E. F.) by three several promissory notes, under their hands, and respectively bearing even dates with these presents, for the payment of the sum of \$ each (making together the said aggregate sum of \$), the first of such promissory notes becoming due at the expiration of two calendar months, the second at the expiration of four calendar months, and the third at the expiration of six calendar months next after the date of these presents, (the receipt of which three several promissory notes the said (A. B.) hereby acknowledges), he the said (A. B.) assigns and transfers unto the said (C. D.) and (E. F.) their executors, administrators, and assigns, all that the one equal undivided third part or share, and all other the part, share, and interest of him the said (A. B.) of and in all and singular the several leasehold premises specified in the said Schedule hereunder written, and of, and in all the fixed and moveable engines and machinery, plant, moneys, stock in trade, contracts, goodwill, profits, effects, property, matters, and things of the said partnership, or of them the said parties hereto, by virtue thereof, and also of and in all and every such credits and sums of moneys as are now outstanding, due or owing to them the said parties hereto on account of their said partnership; To have, receive and take the premises hereby assigned unto the said (C. D.) and (E. F.), their executors, administrators, and assigns, for their own absolute use and benefit; absolutely discharged from any lien or claim in respect of the three several promissory notes hereinbefore mentioned, or any of them; and for the consideration aforesaid, and for the more effectually enabling the said (C. D.) and (E. F.), their executors, administrators and assigns, to receive and recover the said several credits and effects of the said partnership, he the said (A. B.) hereby irrevocably appoints the said (C. D.) and (E. F.), their executors and administrators, his lawful attorneys in the joint names of the said (A. B.), (C. D.), and E. F.) or otherwise, but for the exclusive benefit and at the cost and risk of the said (C. D.) and (E. F.), their executors or administrators, to demand, call in and receive from all persons whom it may concern all and singular the credits, moneys and effects of the said partnership, and to give effectual

receipts and discharges for the same respectively, and to use all such remedies or proceedings for recovering and getting in the said credits and effects respectively as may be deemed expedient ; and for all or any of the purposes aforesaid, from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke, and generally to do whatsoever shall be requisite for giving to the said (C. D.) and (E. F.), their executors or administrators, the full benefit of the assignment hereby made. And the said (A. B.) hereby covenants with the said (C. D.) and (E. F.) in manner following, that is to say (covenants by retiring partner that he has not contracted any debts, nor incumbered his share, for further assurance ; and not to receive or release debts, etc. And in further pursuance and performance of the hereinbefore recited agreement, and in consideration of the premises, they, the said (C. D.) and (E. F.) do hereby jointly and severally covenant with the said (A. B.), that they the said (C. D.) and (E. F.) or one of them, or the heirs, executors, or administrators of them or one of them will, 'etc., within..... calendar months from the date hereof pay and discharge all the debts and liabilities of the said partnership, and will at all times hereafter effectually keep indemnified the said (A. B.), his heirs, executors and administrators, and his and their estate and effects against all actions, proceedings, costs, damages, expenses, claims and demands in respect thereof, and also against all costs, damages and expenses by reason of any action or proceeding which may be brought or instituted by the said (C. D.) and (E. F.) or either of them, their or either of their executors or administrators, in the name or names of the said (A. B.), his executors or administrators, by virtue of the power or authority hereinbefore contained, or of any act, matter or thing in relation thereto.

And this Indenture lastly witnesseth, that in further pursuance and performance of the hereinbefore recited agreement, and in consideration of the premises, each of them the said (C. D.) and (E. F.) hereby releases and discharges the said (A. B.), his heirs, executors, administrators, and assigns; and

he the said (A. B.) hereby releases and discharges the said (C. D.) and (E. F.) and each of them, and the heirs, executors, administrators, and assigns of them, and of each of them (but subject and without prejudice to the covenants contained in these presents) from all actions, proceedings, claims and demands, which they the said releasing parties respectively, or either of them, or their or his executors or administrators, now have or has, or hereafter may have, against the others or other of them, their or his executors or administrators, by reason of the above-recited partnership, or any other matter or thing relating thereto.

In witness, etc.

DECLARATION OF CO-PARTNERSHIP.

p. 162.

Province of Ontario, }
County of }

We, _____ of _____
in _____ (occupation)
and _____ of _____
in _____ (occupation)
hereby certify

1. That we have carried on and intend to carry on trade and business as _____ at _____ in partnership, under the name and firm of _____ (or, I or we) the undersigned of _____ in _____ hereby certify that I (or we) have carried on _____ and intend to carry on trade and business as _____ at _____ in partnership with C. D. of _____ and E. F. of _____ (as the case may be).

2. That the said partnership has subsisted since the day of _____ 1900.

3. And that we (or, I or we) and the said C. D. and E. F. are and have been since the said day the only members of the said partnership.

Witness our hands at _____ this
day of _____ 19 _____

R. S. O. Cap. 152, Schedule A.

The Nova Scotia, British Columbia and North-West Territories forms are substantially the same as the above.

The Manitoba and New Brunswick Acts give no corresponding forms.

CERTIFICATE OF LIMITED PARTNERSHIPS.

P. 133.

We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of (B. D. & Co.) as (Grocers and Commission Merchants), which firm consists of (A. B.) residing usually at _____ and (C. D.) residing usually at _____ as General Partners; and (E. F.) residing usually at _____ and (G. H.) residing usually at _____ as Special Partners. The said (E. F.) having contributed (\$4,000) and the said (G. H.) (\$8,000) to the Capital Stock of the said Partnership.

The said Partnership commenced on the _____ day of _____ 19 _____ and terminates on the _____ day of _____ 19 _____

Dated this _____ day of _____ 19 _____

(Signed) A. B.
C. D.
E. F.
G. H.

Signed in the presence of me, }
L. M. }
Notary Public. }

R. S. O. Cap. 151, Schedule.

The Manitoba, British Columbia and North-West Territories forms are substantially the same as the above.

The New Brunswick and Manitoba forms are contained in the body of the Act, and there is no form given in the Nova Scotia Act.

FIRM INDEX BOOK.

p. 174.

STYLE OF FIRM.	NAME OF PERSONS COMPOSING FIRM.	Date of Filing Declaration.
Abbott, Black & Co....	George Abbott, John Black, Edward Cork.....	10th Feb., 1871
Bernard, Green & Jones.	John Bernard, Edward Green, John Jones.....	12th Feb., 1871
Cook (Thomas) & Co..	Thomas Cook, James Wilson.....	14th Feb., 1871
Dadson, William.....	William Dadson, Thomas Jones, Robert Watson, William Wilberforce, James Johnson.....	14th Feb., 1871
Dick & Co.....	Richard Dick.....	15th May, 1872
Dow (Wm.) & Sons....	William Dow.....	19th May, 1872

R.S.O., C. 152, Sec. 14, Schedule C.

INDIVIDUAL INDEX BOOK.

p. 175.

NAME OF INDIVIDUAL.	STYLE OF FIRM OF WHICH A MEMBER.	Date of Filing Declaration.
Abbott, George	Abbott, Black & Co.....	10th Feb., 1871
Black, John	Abbott, Black & Co.....	10th Feb., 1871
Bernard, John	Bernard, Green & Jones.	12th Feb., 1871
Cook, Edward	Abbott, Black & Co.....	10th Feb., 1871
Cook, Thomas.....	Thos. Cook & Co.	14th Feb., 1871
Dadson, William.	William Dadson.....	14th Feb., 1871
Dick, Richard	Dick & Co	15th May, 1872
Dow, William.....	Wm. Dow & Sons.....	19th May, 1872

NOTE.—In the above Schedules surnames having different initial letters are shewn together. This is done merely for the purpose of illustrating by means of a number of names, the manner in which the entries should be made. In the Index books, surnames having different initial letters should not appear in the first column of either book on the same page, but should be indexed alphabetically, the style of a firm being indexed in the firm index book according to the initial letter of the first surname mentioned.

The New Brunswick Act gives no corresponding form. The forms given in the other Provinces are substantially the same.

R.S.O., C. 152, Sec. 15, Schedule D.

DECLARATION OF DISSOLUTION OF PARTNERSHIP.

p. 165.

Province of Ontario, }
County of }

I, _____ formerly
a member of the firm carrying on business as
at _____ in the County of _____
under the style of _____
do hereby certify that the said partnership was on the
day of _____ dissolved.

Witness my hand at _____ the
day of _____ 19 ____
R.S.O. 152, Sec. 6, Schedule B.

The Nova Scotia, British Columbia and North-West
Territories forms are the same.

The New Brunswick and Manitoba Acts give no form.

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